

**SIR JOHN WOODROFFE'S**



**LAW  
RELATING  
TO RECEIVERS**





*Also available with*

**Delhi Law House,**

77-Gokhale Market

Opp. New Courts.

DELHI-110 054 (India)

Ph. 231793, 2917627, 2513959



# Tagore Law Lectures, 1897.

## LAW RELATING TO RECEIVERS

By

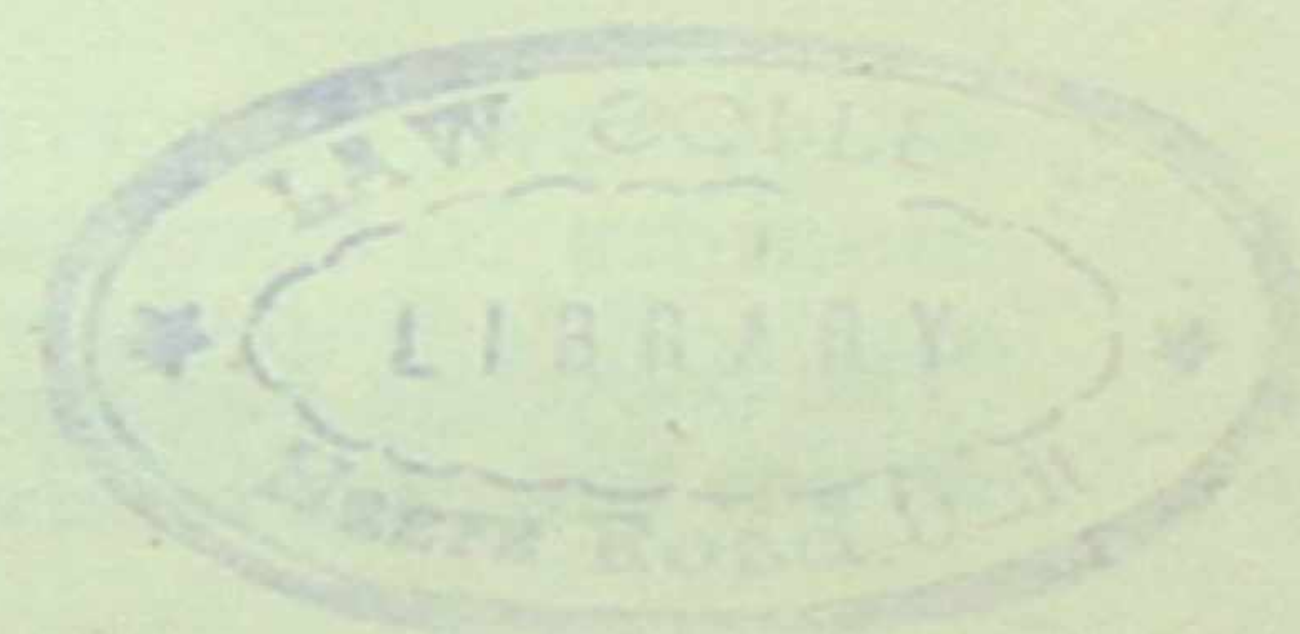
**SIR JOHN WOODROFFE, M.A., B.C.L.**

*Formerly Reader in Indian Law to the University of Oxford  
and a Judge of the High Court of Judicature  
at Fort William in Bengal*

SIXTH REPRINT EDITION

**1988**

WITH SUPPLEMENT



By

**HON'BLE JUSTICE B. C. JAUHARI**

Judge High Court Allahabad  
(Now Retired)



REPRINTED BY

**LAW PUBLISHERS (INDIA) PVT. LTD.**  
SARDAR PATEL MARG, ALLAHABAD  
(INDIA)



*Published by*  
R.G. Sagar  
for Law Publishers (India) Pvt. Ltd.,  
P.B. No. 1077, Sardar Patel Marg  
Allahabad - 211 001

6th Edition 1964  
Reprint Edition with Suppl. 1988

GS 28,402

The copyright and the rights of translation  
in any language reserved by the publishers.

LS.B. No. 81-7111-008-8

346-078 W86edG

[H2873]

Price Rs. 150/-

Department of Law Library  
CALCUTTA UNIVERSITY

Call No .....  
Accession No .....  
Date .....  
ISBN No .....  
Released by .....

*Reprinted at*  
Goyal Offset Works,  
Delhi.



## PUBLISHER'S NOTE

### To the supplementary 6th Edition, Reprint 1988.

Woodroffe's book on Law Relating to Receivers needs no introduction to our learned readers, it is Tagore Law Lectures 1897. The book has acquired a reputation of a classic on the subject and is quoted with respect by all concerned. For its brilliant lucidity and incisive clarity, it is par excellence, measured by the number of times it has been cited as an authority by the Courts, the number of times it has been referred to by Authors and the number of years it has been in constant use by Lawyers and Receivers alike.

Like most laws, the law on this subject is also ever growing. The judicial decisions and the pronouncements of eminent jurists on the subject have not yet ceased to widen the horizon and consequently the imperative necessity of keeping the book completely up-to-date.

It is the oldest, most reliable and influential treatise on the Law Relating to Receivers in India. The last 6th Edition was published in 1964. In order, not to disturb the original plan and style of the book, which has by now come to stay as standard and approved form for decades, no interference has been made in the subject matter.

A large volume of case law has centered around this subject. Usually, the massive cataloguing of authorities makes the reading of the commentaries dull and even oppressive. It is the distinction of Woodroffe's treatises that they state and expound the basic principles, before plunging into the labyrinth of case law. Therefore, we have strictly followed the approved style of the book and have released, this new reprint supplementary edition with the help of selected cases giving the reference to the page number of the main book where it is to be read.







## PREFACE TO SIXTH EDITION.

The last edition of this treatise lustily received by the legal public was exhausted long ago. For various reasons the present edition could not be brought out earlier.

The case-law on the subject accumulating during the last eight years is significant both in quality and quantity. All decisions right upto September, 1964 have been carefully noted (with comments where necessary) in appropriate places.

Readers of the book are earnestly requested to point out errors and omissions that may be found in it.

Calcutta  
October, 1964.

M. C. BHAUMIK

## PREFACE TO FIFTH EDITION.

Sir John Woodroffe's *LAW RELATING TO RECEIVERS* became a classic in the literature of Law in British India. It is to be regretted that after the demise of the eminent author such a highly useful book did not come out with revision for long over a quarter of a century. Lawyers cannot willingly let it die : Inquiries about it had been hailing from various quarters all the while.

Entrusted with the task of a new edition I have of necessity made some changes in the text. To instance : (i) Amendment of s. 146 of the Criminal Procedure Code in 1923 shows that the appointment of a receiver by the Civil Court, though not *ipso facto* discharging a receiver already appointed by a Magistrate, ultimately tends so to do (p. 34). The point has been discussed further at p. 295 to show that *Bidya Prasad v. Ashrafi*, 40 C. 862 : 17 C. W. N. 1070, is mostly superseded by that amendment. (ii) The Federal Court decision in *Rayarappan v. Madhavi*, 1950



F. C. 140, as to the appealability of an order removing or refusing to remove a receiver has necessitated recasting the text at p. 158. (iii) Regarding the question whether in passing the receiver's accounts the appointing Court can summarily investigate the loss, occasioned by his wilful default or gross neglect, the view of *Sattya Sankar v. Golapmonee*, 5 C. W. N.223, elaborately quoted by the author at pp. 247-251, stands somewhat qualified by the new provisions of O. 40, r. 4, and I have pointed out this at p. 251. Additions have been made at proper places and foot-notes developed by select case-law. References given by the author in the 4th edition have mainly been kept intact. I have occasionally cited Alderson, Clark, Pomeroy and other authorities on the subject. Heavy brackets have sometimes been used for notes for which I am alone responsible.

I have added a commentary on O. 40 of the Civil Procedure Code, 1908, with all local amendments in Appendix B. This is, in the main, by way of a supplement and is thus calculated to make the book self-contained and up-to-date on the subject. Attempts have been made to make the treatise equally useful in India, Pakistan and Burma, substantially the three off-shoots of *whilom* British India with reference to which the book was originally written by the jurist author. No pains have been spared to thoroughly revise the treatise. Sri Tapash Kumar Bhaumik, B.L., rendered valuable assistance in this respect.

Calcutta,  
January, 1956.

Mokshada Charan Bhaumik.

## PREFACE TO FOURTH EDITION.

THIS volume contains in an enlarged form that portion of the Tagore Law Lectures delivered by me in the University of Calcutta, which relates to the subject of Receivers.

In the preparation of this volume I have consulted and made use of the following English and American text-books:—"A Practical Treatise on the Appointment, Office and Duties of a Receiver under the High Court of Chancery", by W. H. Bennet



## PREFACE

v

(London, 1849) ; "Commentaries on the Law of Receivers", by C. F. Beach (New York, 1894) ; "A Treatise on the Law of Receivers," by J. L. High, Third Edition (Chicago, 1894) ; "The Law of Receivers of Corporations", by J. L. Gluck and A. Becker, Second Edition (New York, 1896), and the well-known "Treatise on the Law and Practice as to Receivers appointed by the High Court of Justice", by W. W. Kerr, Eighth and last Edition (London, 1924).

Decisions of the Indian Courts, including several unreported cases, have been collected to the end of 1926, and inserted in the text. Subsequent cases will be found in the *Addenda*. I am indebted to the late Mr. Fink, formerly Registrar of the High Court, Calcutta, for assistance kindly rendered by him on various points dealt with and for the Appendix of Forms which he caused to be prepared for me. I wish also to thank Mr. Tapanmohan Chatterji, Barrister-at-Law, for help rendered in the preparation of this Edition and corrections of the proofs.

J. W.

27 April, 1927.





# CONTENTS

*The references are to the pages*

PREFACE TO SIXTH EDITION	.. .. .	iii
PREFACE TO FIFTH EDITION	.. .. .	iii
PREFACE TO FOURTH EDITION	.. .. .	iv
TABLE OF CONTENTS	.. .. .	vi
TABLE OF CASES CITED	.. .. .	ix

## CHAPTER I

### GENERAL FEATURES OF THE JURISDICTION

#### SECTIONS

1. Definition and nature of office of receiver	.. .. .	1
2. Appointment of a receiver is a form of specific relief	.. .. .	9
3. Law relating to receivers	.. .. .	13
4. Jurisdiction to appoint receivers	.. .. .	16
5. Exercise of jurisdiction is discretionary	.. .. .	26
6. Enforcement of orders and decrees	.. .. .	34

## CHAPTER II

### THE APPOINTMENT

7. Who may be appointed	.. .. .	38
8. Subject-matter of appointment	.. .. .	43
9. Time when receiver may be appointed	.. .. .	51
10. Time from which appointment takes effect	.. .. .	52
11. Duration of appointment	.. .. .	53
12. Mode of appointment	.. .. .	54
13. Security	.. .. .	58
14. Order cannot be questioned collaterally	.. .. .	60
15. Effect of appointment	.. .. .	61
16. Possession and interference with possession of receiver	.. .. .	63
17. Suits and applications against receiver	.. .. .	76

## CHAPTER III

### RECEIVERS OF PROPERTY THE SUBJECT OF SUIT

18. General principles	.. .. .	89
19. Cases where property is <i>in medio</i>	.. .. .	97
(a) Testamentary Suits	.. .. .	97
20. Cases where plaintiff possesses an admitted interest	.. .. .	102
(a) Joint tenants and tenants-in-common	.. .. .	103
(b) Partition-suits	.. .. .	108



## CONTENTS

vii

SECTIONS	PAGE
(c) <i>Tenant for life : Remainderman : Hindu widow</i> ..	114
(d) <i>Partnership-suits</i> .. .. .	115
(e) <i>Trusts</i> .. .. .	123
(f) <i>Executors and Administrators</i> .. .. .	126
(g) <i>Infancy</i> .. .. .	129
(h) <i>Lunacy</i> .. .. .	131
21. Cases where plaintiff's title is disputed by defendant claiming under legal title .. .. .	131
22. Miscellaneous cases .. .. .	136
(a) <i>Contract : Covenant : Conveyance</i> .. .. .	136
(b) <i>Sales</i> .. .. .	136
(c) <i>Leases</i> .. .. .	137
(d) <i>Covenant</i> .. .. .	137
(e) <i>Debtor and Creditor</i> .. .. .	138
(f) <i>Mortgages</i> .. .. .	141
(g) <i>Other cases</i> .. .. .	155
23. Appeal .. .. .	156

## CHAPTER IV

### RECEIVERS OF PROPERTY UNDER ATTACHMENT

24. Receivers of attached property .. .. .	160
25. When and how appointed .. .. .	160
26. Powers and duties of receiver .. .. .	170
27. Removal of receiver .. .. .	186

## CHAPTER V

### RIGHTS AND POWERS : DUTIES AND LIABILITIES OF A RECEIVER

28. Rights and powers .. .. .	187
(a) <i>General</i> .. .. .	187
(b) <i>Discretion</i> .. .. .	189
(c) <i>Application for instructions</i> .. .. .	190
(d) <i>Power to appoint deputies and assistants</i> .. .. .	191
(e) <i>Possession</i> .. .. .	193
(f) <i>Leases</i> .. .. .	195
(g) <i>Sales</i> .. .. .	204
(h) <i>Borrowing</i> .. .. .	213
(i) <i>Payment</i> .. .. .	217
(j) <i>Suits and applications by or defended by Receiver</i> .. .. .	222
(k) <i>Indemnity</i> .. .. .	234
(l) <i>Salary and allowances</i> .. .. .	237
(m) <i>Lien</i> .. .. .	239
29. Rights and liabilities .. .. .	240
(a) <i>Amenability to Court</i> .. .. .	240
(b) <i>Duty of Obedience</i> .. .. .	240



SECTIONS

PAGE

(c) <i>Non-liability in respect of acts done under order</i> ..	241
(d) <i>Impartiality</i> .. .. .	241
(e) <i>Duties generally</i> .. .. .	241
(f) <i>Liability for loss</i> .. .. .	242
(g) <i>Liability on covenants</i> .. .. .	244
(h) <i>Information to be given to Court</i> .. .. .	244
(i) <i>Liability to account</i> .. .. .	245

CHAPTER VI

REMOVAL OF RECEIVER AND DISCHARGE OF RECEIVER AND SURETIES

30. Jurisdiction to remove and discharge receiver .. .. .	256
31. Removal of receiver .. .. .	258
(a) <i>Upon his own application</i> .. .. .	258
(b) <i>Upon the application of the parties</i> .. .. .	259
32. Final discharge of receiver .. .. .	263
33. Discharge of sureties .. .. .	274

APPENDIX

A. Act VIII of 1859 (Civil Procedure) .. .. .	277
Act I of 1877 (Special Relief) .. .. .	278
Act X of 1877 (Civil Procedure) .. .. .	279
Act XIV of 1882 (Civil Procedure) .. .. .	279
B. Act V of 1908 (Civil Procedure) with commentary .. .. .	281
C. Forms of Orders .. .. .	308
INDEX .. .. .	317
ABBREVIATIONS, ADDENDA .. .. .	338



## TABLE OF CASES CITED

Abdul Momin v. Hussain ..	94	Balai v. Pramatha .. .. .	80
Administrator-General v. Prem Lall ..	9, 23, 253, 254	Balbir v. Ram .. .. .	188
Ahmed Asmal v. Bai Bibi ..	114	Baldeo v. Guri Sankar .. ..	251
Aiya v. Tenammal .. .. .	41	Bhawaniram v. Md. Hussain ..	141
Ajit v. Yamuna .. .. .	158	Beers v. Chelsea Bank .. ..	259
Akula v. Dhelli .. .. .	230	Behari v. Shankar .. .. .	240
Ali Ismail v. Momina .. ..	159	Bell v. Shibley .. .. .	222
Alkama v. Syed .. .. .	27, 29	Bellamy v. Sabine .. .. .	202
All. Bank v. Rajaram .. ..	71, 188	Beni Madhab v. Deb .. .. .	7, 35
Allbright v. Allbright .. ..	125	Bennett v. Colley .. .. .	124
Allen v. Hawley .. .. .	115	Benode v. Raj Narain .. ..	185, 225
Alven v. Bond .. .. .	212	Benoy v. Satish .. .. .	26, 27, 30, 159
Ames v. Birkenhead Docks ..	36, 68	Bepin Behari v. Bonnerjee ..	269
Anath v. Mohendra .. .. .	88	Berney v. Sewell .. .. .	153
Angel v. Smith .. .. .	4	Bertie v. Lord Abingdon .. ..	262
Anglo-Italian Bank v. Davis ..	149, 163, 263	Bertrand v. Davies .. .. .	8, 239
Anon .. .. .	73, 232	Bhadrabati v. Jiban .. .. .	213
Appasmi v. Johta .. .. .	7, 150, 221	Bhagwan v. Radhika .. .. .	115
Apthorpe v. Apthorpe .. ..	43	Bhairab v. Nandiram .. .. .	60
Armstrong v. Armstrong .. ..	228	Bhubanesvari v. Ajodhya .. ..	63
Arumugam v. Kannappa .. ..	157, 159	Bhubaneswar v. Rajeswar .. ..	108
Aruna v. U Po .. .. .	255	Bhugwan v. Heera .. .. .	268
Asad v. Hossein .. .. .	2	Bhugwandas v. Rivett .. ..	18
Assardas v. Thakurbai .. ..	88	Bhupendra v. Monohar .. ..	1, 28, 39
Aston v. Heron .. .. .	81	Bidya v. Ashrafi .. .. .	34
Athika v. Eratha .. .. .	29	Bignell, <i>Re</i> .. .. .	41, 238
Attah v. Bala .. .. .	159	Birajan v. Ram .. .. .	157
Attorney-General v. Mayor of Gallway ..	52	Biresh v. Sudhangshu .. ..	141
Badal v. Birch .. .. .	5, 10	Birt, <i>Re</i> .. .. .	53
Baddam v. Dhunput .. .. .	91	Bissessuree v. Sookram .. ..	9, 73
Baldya Nath v. Makhan .. ..	23, 156, 157	Blair v. Maidstone .. .. .	78
Bajj Nath v. Hem .. .. .	102	Blakeney v. Dufaur .. .. .	117
Bainbrigge v. Blair .. .. .	264, 265	Boehm v. Wood .. .. .	136
Bat Sakri v. Bai Dhani .. ..	68	Braddon v. Abbott .. .. .	31
Bajanmal v. Tyagaraja .. ..	22	Braham v. Strathmore .. ..	265
Balaji v. Ramchandra .. ..	189, 191, 192, 195, 238, 245, 248, 254	Brij Indar v. Jai Indar .. ..	186
Balchand v. Swai .. .. .	88	Brenan v. Morissey .. .. .	261
Banku v. Harendra .. .. .	64, 78	Bristowe v. Needham .. ..	235
Bapuji v. Lahmidas .. .. .	189	British Power Traction & Lighting Co., <i>In re</i> .. ..	236
Barada v. Rashmani .. .. .	193, 217, 220, 245, 246	Broad v. Wickham .. .. .	4
Barada v. Shama .. .. .	276	Brocklebank v. East London Railway Company .. ..	74, 75, 76
Barkat-un-Nissa v. Abdul Aziz ..	24, 25, 34	Brojendra v. Kanwar .. .. .	164
Basir v. Hafiz .. .. .	204	Brojendra v. Bharat .. .. .	7
Batten v. Wedgwood Coal Co. ..	234, 238, 239	Brooke, <i>Re</i> .. .. .	234
Baxter v. West .. .. .	29, 116	Brooks v. Greathead .. .. .	4, 73
Beaufort v. Berty .. .. .	130	Broughton v. Ashaff .. .. .	209
Bachraj v. Ram Prasad .. ..	27, 142	Bryan v. Cormick .. .. .	72, 140
		Bryant v. Bull .. .. .	62
		Buck v. Colbath .. .. .	5
		Buddinath v. Bycantnath .. ..	19, 45, 48, 240, 257
		Bunwaree v. Girdharee .. ..	23, 165, 166, 186



TABLE OF CASES CITED

Bunwari v. Mohabir .. .. .	166	Delfosse v. Crawshay .. .. .	243
Burt v. Bull .. .. .	234	Delhi and London Bank v. Wardie .. .. .	19, 20
Chirutha v. Chandu .. .. .	5	Dent v. Dent .. .. .	43
Calvert v. Adams .. .. .	46	Devey v. Thornton .. .. .	101
Carrow v. Ferrier .. .. .	131	DeWinton v. Mayor of Brecon 67,	243
Carter v. Fly .. .. .	55	Dharendra v. Surendra .. .. .	139
Cassim v. Yusuf .. .. .	42	Dhundiram v. Chanda .. .. .	17
Chaitan v. Gocool .. .. .	244	Dickinson, Re .. .. .	181
Chandamull v. Sardarilal .. .. .	35	Dickinson v. Smith .. .. .	73
Chandidat v. Padmanand 12, 25, 27,		Din Dyal v. Ram Ruttun .. .. .	164
28, 30, 32, 92, 93, 132, 134, 140,	159	Dinnonauth v. Hogg 5, 21, 35,	188,
Chandranath v. Biswanath .. .. .	204,		224, 258
	206, 208	Dinobundhoo v. Macnaghten .. .. .	167
Chandrasekhar v. Hari .. .. .	222	Dinshaw v. Amrit .. .. .	80
Chandrawati v. Jagan .. .. .	88	Dixon v. Smith .. .. .	73
Chandreswar v. Biseswar .. .. .	16	Dixon v. Dixon .. .. .	121
Chandu v. Manik .. .. .	155	Doorga Dutt v. Bunwaree .. .. .	165
Chapman v. Beach .. .. .	116	Doulat v. Rameswari .. .. .	4, 9
Chapar v. Kabil .. .. .	255	Drobomoy v. Davis 196, 198, 199,	223,
Chartered Bank v. Harish .. .. .	82		224, 226, 229
Cheria v. Valia .. .. .	26, 157, 159	Duke of Beaufort v. Berty .. .. .	130
Chettiar Firm v. U. Sin .. .. .	23, 139	Dunn Brinklow v. Singleton .. .. .	237
Chinnery v. Evans .. .. .	220	Dunne v. Chundra Kishore .. .. .	79
Chunilall v. Sonabai .. .. .	26, 157	Dwijendra v. Joges .. .. .	1, 2, 4
Clarke, Re. .. .. .	53		
Clayton v. Attorney-General .. .. .	32, 134	Eastern Mortgage Co. v. Rukea .. .. .	38, 90, 152
Cochrane, <i>Ex parte</i> .. .. .	71	Eastern Mortgage Co. v. Moham- mad .. .. .	1, 2, 3, 7, 9, 137
Codrington v. Johnston .. .. .	53	Eastern Moragage Co. v. Prema- nanda .. .. .	54, 158
Colvin, <i>In re</i> .. .. .	265	Ebrahim v. Emperor .. .. .	37
Comyn v. Smith .. .. .	241	Edwards, <i>Re</i> .. .. .	269
Conro v. Gray .. .. .	96	Edwards v. Edwards .. .. .	52
Const v. Harris .. .. .	115, 117	Emanjan v. Emanjan .. .. .	129
Cookes v. Cookes .. .. .	42	Empringham v. Shortt .. .. .	73
Coomar Sattya Sankar v. Golap- monee .. .. .	82, 243, 247, 250, 251	Evans, <i>Ex parte</i> .. .. .	63
Cooper's Case .. .. .	32	Evans v. Coventry .. .. .	3
Cooper v. Reilly .. .. .	43	Evans v. Taylor .. .. .	202
Corporation v. Haji Kassim .. .. .	242	Evelyn v. Evelyn .. .. .	46
County, etc., Bank v. Ruding, etc. Collery .. .. .	146	Evelyn v. Lewis .. .. .	62, 72, 228
Courand v. Hanmer .. .. .	235	Everett v. Prythergh .. .. .	127
Cox v. McNamara .. .. .	259		
Crane v. Braucker .. .. .	85	Fakir v. Goolam .. .. .	151
Crisp v. Platel .. .. .	233	Ferry v. Bank of Central New York .. .. .	268
Crow v. Wood .. .. .	71	Fink v. Buldeo Doss .. .. .	229
Cummins v. Perkins .. .. .	139	Fink v. Corporation of Calcutta .. .. .	79
Cursatji v. Gangaram .. .. .	156	Fink v. Maharaj Bahadur .. .. .	162,
			169, 229
Dalmar v. Dashwood .. .. .	153	Foster v. Townshend .. .. .	62
Daly v. Kelly .. .. .	203	Foujmal v. Bhikibai .. .. .	88
Daman v. Maktul .. .. .	88	Faser v. Burgess .. .. .	239, 270
Dayabhai v. Natwarlal .. .. .	117	Fraser v. Krishnaswami .. .. .	64, 141
D. K. Raja v. P. S. Kumarswarm .. .. .	10	Furlong v. Edwards .. .. .	267
Damodar v. Panalal .. .. .	122	Fuzlur v. Anath .. .. .	76
Dan Prasad v. Gopi .. .. .	2, 114	Fyz-odd-deen v. Giraudh Singh .. .. .	168
Davis v. Duke .. .. .	140, 264		
Davis v. Ingram .. .. .	204	Galluchat, <i>Ex parte</i> .. .. .	127
Davy v. Scarth .. .. .	120	Galstaun v. Diana .. .. .	20
Dawson v. Yates .. .. .	137	Ganesh v. Harihar .. .. .	30
Day, <i>Ex parte</i> .. .. .	67	Gauri Shankar v. Sankar .. .. .	7
Deokumari v. Ramlal .. .. .	168		
Defries v. Creed .. .. .	52, 53		



# TABLE OF CASES CITED

xi

Ganesh v. Satya .. .. .	255	Hamlyn v. Lee .. .. .	73
Ganga Dass v. Yakub .. .. .	63	Hanumayya v. Venkatasubbayya .. .. .	16, 23, 24, 93
Ganpati v. Prahlad .. .. .	2, 3, 101	Harbuns v. Bhairo .. .. .	27
Gaskell v. Durdon .. .. .	203	Harding v. Glover .. .. .	117
Gaskell v. Gosling .. .. .	146	Hargrave v. Hargrave .. .. .	46
Gauri v. Nilabati .. .. .	156	Hari Dass v. Macgregor .. .. .	198, 200, 225, 226
General Share Co. v. Wetley Brick Co. .. .. .	258	Harihar v. Jaharuddin .. .. .	2, 8, 87
Ghanasham v. Moroba .. .. .	27	Harihar v. Harendra .. .. .	3, 8, 44
Ghansham v. Raja .. .. .	267	Harris, <i>Ex parte</i> .. .. .	227
Ghanashyam v. Gobinda .. .. .	141	Harris v. Sleep .. .. .	238
Girdharan v. Majid .. .. .	238	Harrison v. Boydell .. .. .	254, 269
Giridharlal v. Jogeshur .. .. .	169	Hassonbhoy v. Cowasji .. .. .	35
Giridhari v. Poresh .. .. .	215	Heald v. Hay .. .. .	43
Gladdon v. Stoneman .. .. .	127	Hemanginee v. Kumode .. .. .	156
Glasdir Copper Mines, Ltd., <i>In re</i> .. .. .	215	Hemchunder v. Prankristo .. .. .	64, 66
Glossup v. Harrison .. .. .	276	Hemendra v. Prokash .. .. .	165, 166
Gobind Rani v. Brinda .. .. .	143	Henderson v. Skarret .. .. .	276
Golam v. Fatima .. .. .	204, 210	Herman v. Dunbar .. .. .	258
Goldschundt v. Obechemische Metalwerke .. .. .	162	Herumbo v. Mohaluckhy .. .. .	208
Gomme v. West .. .. .	73	Herumbo v. Satish .. .. .	215
Gonesh v. Troylucko .. .. .	200, 245, 261, 263	Hicks v. Hicks .. .. .	245
Goodman v. Whitcomb .. .. .	115, 116	Hills v. Reeves .. .. .	228
Gopal v. Debi .. .. .	88, 158	Holcombe v. Johnson .. .. .	241
Gopalasami v. Sankara .. .. .	173, 174, 175	Holkar v. Dadabhoy .. .. .	20
Gopal Lal Seal, <i>In the goods of</i> .. .. .	219	Hopkins, <i>Re</i> .. .. .	124
Gora Chand v. Makhan .. .. .	204, 211, 214	Hoskins v. Campbell .. .. .	265
Gossain Dulmir v. Tekait .. .. .	28, 132, 156, 157	Houlditch v. Marquis of Donegal .. .. .	70
Govind v. Vallabh .. .. .	108	Howell v. Dawson .. .. .	155
Gower v. Bennett .. .. .	81	Hudson v. Morgan .. .. .	76, 159
Gray v. Chaplin .. .. .	29	Huggings, <i>Ex parte</i> .. .. .	43
Greenwood v. Algesiras Railway Co. .. .. .	213	Hugueniu v. Basely .. .. .	137
Grenfell v. Dean and Canons of Windsor .. .. .	266	Hull v. Thomas .. .. .	67
Grey v. Woogra .. .. .	4, 25, 26, 37	Hunt v. Prist .. .. .	73
Griffith v. Griffith .. .. .	262, 274	Huree Sunkur v. Jogendro .. .. .	164, 165, 186
Grote v. Bing .. .. .	55	Hurronath v. Chuni .. .. .	174
Gunnesser Lal v. Khoob Narain .. .. .	211, 212	Hutchinson v. Massareene .. .. .	180
Guru v. Velu .. .. .	234	Institute Indo-Portugese v. Dr. T. Borges .. .. .	125
Gurumurthi v. Ramswami .. .. .	255	Ideal Bedding Co. v. Holland .. .. .	162
Gyan v. Kristo .. .. .	88	Inde Coope & Co. v. Kidd .. .. .	243
Hiralal v. Loonkaran .. .. .	53	Ishri v. Shibram .. .. .	88
H. v. H. .. .. .	51	Izard, <i>Ex parte</i> .. .. .	234, 235
H. H. Shrimant Maharaja Yashvantrao Holkar v. Dadabhai Cursetji Ashburner .. .. .	35	Jagana v. Atchana .. .. .	79
Habibulla v. Abtia .. .. .	27, 28	Jagat Tarini v. Noba Gopal .. .. .	220, 229
Hadjee v. Hadjee .. .. .	20	Jagdish v. Debendra .. .. .	3
Hafiza v. Karim .. .. .	127, 129	Jagdish v. Ganesh .. .. .	258
Haines v. Carpenter .. .. .	127	Jai Indar v. Brij Indar .. .. .	186
Haji Cassim v. Dutt .. .. .	232	Jaikisondas v. Zenabai .. .. .	21, 22, 25, 32, 146, 149, 150
Haji Ismail v. Rabiabai .. .. .	123	Jairam v. Atmaram .. .. .	19
Hale, <i>Re</i> .. .. .	220	Jamadar v. Kanai .. .. .	132
Hall v. Hall .. .. .	12, 115	Jamesdji v. Hussein .. .. .	79
Hall v. Jenkinson .. .. .	136	Jannabai, <i>In re</i> .. .. .	88
Hamida v. Jamila .. .. .	74	Jebanessa v. Majiunessa .. .. .	42
Hamilton v. Brewster .. .. .	274	Jayanti v. Waman .. .. .	240
		Jekison v. Nana .. .. .	255
		Jijai Amba, <i>Ex parte</i> .. .. .	52, 54
		Jijoylamba Bayi Saiba v. .. .. .	



TABLE OF CASES CITED

Kamakshi Bayi Saiba ..	270, 273	Kuratul v. Broughton ..	9, 35
Jitendra v. Padam ..	129	Lala Chugan v. Kalio ..	141
Jiteswari v. Sudha ..	204	Lakshmi v. Amar ..	166
Jogendra v. Debendra ..	64, 66, 67	Lakshmi v. Sachindra ..	87
John v. John ..	136	Langley v. Hawk ..	127
Johnes v. Claughton ..	4, 81	Langton v. Langton ..	72
Johnson, <i>Re</i> ..	124	Largan v. Bowen ..	265
John Tiel & Co. v. Abool Hye ..	15, 167, 171, 177	Latafut Hossein v. Anunt Chowdhry ..	17, 45, 56, 143
Johurmull v. Kedar ..	41	Lavender v. Lavender ..	260, 266, 267
Jotindro v. Sarfaraj ..	78	Leavitt v. Yates ..	95
Joykally v. Shib ..	29	L'Engle v. Firida Central Railway ..	258
Joynarain v. Shibpershad ..	15, 23, 45, 48	L'Engle v. Lindsey ..	191
Juggernath v. Hogg ..	228	Levina Ashton v. Madhabmani Dassi ..	44
Juggodumba v. Puddomoney ..	18, 19	Lilley v. Ford ..	81, 220
Jyoti v. Peari ..	88	—v. Lindsay ..	192
Jyotirmoy v. Biswanath ..	225	Lloyd, <i>Re</i> ..	261
Kashi v. Kundan ..	120	Lloyd v. Mason ..	53
Kahader Bee v. Dastagiri ..	100	Lloyds' Bank v. Medway Upper Navigation Co. ..	162
Krishnaswamy v. Naranappa ..	28	London United Breweries, <i>In re</i> ..	234
Kochuvarki v. Anthony ..	108	Luchminarain Bogla, <i>In the goods of</i> ..	102, 237, 269
Kunjanmal v. Malayappa ..	115	Macmillan v. Cooper ..	31
Kali Kumari v. Bachhan ..	39, 40, 42	Macoun, <i>In re</i> ..	121
Kamal Kumaree v. Poresh ..	20, 47	Madaneswar Singh v. Mahamaya Prasad Singh ..	2, 141
Kamatchi v. Sundaram ..	79	Madgwich v. Wimble ..	119
Kameswar v. Anath ..	142	Madhu v. Sabar Ali ..	50
Kanailal v. Manoo Bibi ..	63	Mahadeva v. Kuppu Sami ..	5
Kanhaiya v. Kanhaiya ..	88	Mahamad Askari v. Nisar Hussian ..	124
Kartick v. Padmanund ..	7, 22, 23, 45, 50	Maharaja of Burdwan v. Apurba Krishna Roy ..	79
Kassim v. Dutt ..	222	Maharaja Rameswar Singh v. Chunilal ..	141
K. B. Dutt v. Shamal ..	246, 255	(Maharaja) Rameswar Singh v. Hitendra Singh ..	262
Kazi Mahmud Miya v. Dada ..	150	Maharana v. David ..	10, 77
Kedar v. Prabhabati ..	195	Maharani v. Nanda ..	115
Keene v. Gaehle ..	241	Mahomed Kasim v. Panchapakesa ..	194
Kellie v. Fraser ..	20	Mahomed Mehdi Galistana v. Joharra Bagum ..	74, 76
Keshabati v. Mohon Chandra ..	43	Mahomed Musaji Saleji v. Ahmed ..	159
Keshav v. Ram ..	255	Malcolm v. Smith ..	31
Keys v. Keys ..	69	Mallappa v. Paldar ..	12
Khan v. Ali ..	35, 63, 64, 67	Manick Lall Seal v. Surrut Coomary Dasse ..	9
Khubsurat v. Sarada ..	155	Mohendra v. Jiban ..	157
Kilachard v. Ajodhya ..	4, 36	Miniammal v. Ranga ..	28
King v. Charu Chandra Mitra ..	224	Manilal v. Nepal ..	131
King-Emperor v. Timmal Reddi ..	35	Manindra v. Suniti ..	147, 156
Kistonundo Biswas v. Prawn Kissen Biswas ..	15	Manmatha v. Saroj ..	10, 63
Knight v. Lord Plymouth ..	242, 244	Man Mohan v. Surendra ..	158, 263
Kochappa v. Sachi ..	36	Mannov v. Greener ..	106
Kokya Dine ..	99	Martin v. Lawrence ..	35
Krishna Chunder v. Krisnasokha ..	87, 200	Masson v. Wessary ..	147
Krishan v. Nani ..	108	Mathalone v. Bombay Life	
Kshitish v. Bengal Central Bank ..	139		
Kshitish v. Janaki ..	88, 158		
Kumara Tirumalai Naik v. Bungalow Tirumalai Sauri Naik ..	104, 108		
Kuppuswami Aiyar v. Suppan Chetti ..	3, 79, 80		
Kuppusami v. Rathnavelu ..	159		
	219, 220		
Kuppusumi v. Subramaniam ..	22		







Rajendra v. Sundar Bibi .. ..	156		
Rajkrishna v. Bepin .. ..	126		
Rajkumar Girja v. Kanhaya ..	221		
Ram v. Nethi .. ..	117		
Raman v. Gopala .. ..	255		
Ramasami v. Ramasami .. ..	26		
Rambutty v. Ramessur .. ..	174		
Ram Chandra v. Keshobuti ..	9		
Ramchunder v. Ram Churn ..	168		
Ramdhan v. Koilas .. ..	164		
Rameswar v. Hitendra .. ..	217		
Ramji v. Koman .. ..	158		
Ramji Ram v. Saligram ..	16, 114		
Ramkumar v. Ashu .. ..	261		
Ramkumar v. Chartered Bank	141		
Ram Lochun v. Hogg 4, 225, 227,	228		
Ram Narain v. Lachmi .. ..	156		
Ramswami v. Ayyalu .. ..	5		
Rani Kanno Dai v. B. L. Lacy	175		
Rani Keshabati v. Mohan ..	169		
Rani Mathusri Jijai Amba, <i>Ex</i>			
<i>parte</i> .. ..	270, 274		
Rayarappan v. Madhavi 158, 256,	263		
Reazat v. Juggunnath .. ..	174		
Rebati v. Uma .. ..	63, 237, 238		
Rednum v. Khaja Mahomed ..	166		
Reeves v. Neville .. ..	265		
Rendall v. Rendall .. ..	98		
Richardson v. Ward .. ..	259		
Ridout v. Fowler .. ..	58, 216		
Roberts v. Eberhardt .. ..	115		
Robinson v. Handley .. ..	55		
Robinson v. Pickering .. ..	138		
Roshan v. Afzal .. ..	28		
Roundwood Colliery Coy., <i>In re</i>	58		
Roy Chund v. Sham .. ..	209		
Rustomjee v. Galbele .. ..	79		
Rudreswari v. Ramabati ..	1, 141		
Sacker, <i>In re</i> .. ..	228		
Safar v. Rahim .. ..	255		
Salway v. Salway .. ..	193		
Sandford v. Ballard .. ..	46		
Sangappa v. Shivabasawa ..	136, 157		
Santoke v. Sukan .. ..	88		
Sarat v. Apurba .. ..	64		
Sarola v. Sarada .. ..	7		
Satoor v. Satoor .. ..	12, 13		
Sattya v. Golap .. ..	243		
Satya v. Satya .. ..	68		
Satya v. Subodh .. ..	237		
Satya Narain Singh v. Kesha-			
<i>bati</i> .. ..	1, 115		
Scaramanga v. Stamp .. ..	31		
Seagram v. Tuck .. ..	221		
Searle v. Chout .. ..	67, 71, 74		
Searle v. Smales .. ..	113		
Secretary of State v. Komargiri	187		
Shadi v. Anup Singh .. ..	27, 30		
Shaik Mohee v. Ahmed .. ..	22		
Shakel v. Duke .. ..	138		
Sham Chand v. Bhaya Ram ..	92, 132		
Shamuldhun v. Lakhimani ..	40,		
		142, 255	
Shankar v. Behari .. ..	269		
Shephard, <i>Re</i> .. ..	149		
Shib v. Lachmi .. ..	202		
Shidlingappa v. Shankarappa ..	121		
Shivaji v. Aiswaryananda 26, 51,	124		
Short v. Pickering .. ..	6		
Shrinivas v. Waz .. ..	255		
Shunmugam v. Moidin ..	22, 52		
Shyamalambai v. Ramamurti ..	88		
Shamlal v. Rajkumar .. ..	157		
Sidheswari v. Abhoyeswari ..	27		
	28, 30, 32, 93, 96, 132, 134,	135	
Sirish v. Debendra .. ..	87		
Sivaprakasa v. Samarapuri ..	155		
Skinner's Society v. Irish			
<i>Society</i> .. ..	29, 96		
Skip v. Harwood .. ..	67, 70		
Smart v. Flood .. ..	53		
Smith v. Jeyes .. ..	116		
Smith v. Lyster .. ..	131, 265, 268		
Smith v. Smith .. ..	69		
Smith v. Vaughan .. ..	259		
Soobul v. Rashik .. ..	180		
Southern Railway Co., <i>Re</i> ..	266		
Sreemutty Okilmoney Dassee, <i>In</i>			
<i>the goods of</i> .. ..	52		
Sree Ram v. Mohabir ..	92, 96, 132		
Sridhar v. Mugniram .. ..	71		
Srinivas v. Kesho 58, 60, 156, 157,			
	159, 162		
Sripati v. Bibhuti .. ..	157, 158, 261		
Satrucharla v. Ram Chandra ..	43		
Stainton v. Carron Co. .. ..	127		
Stalkart v. Stalkart .. ..	58		
Stanley v. Coulthurst .. ..	261		
Steel v. Cobham .. ..	124		
St. George's Estate, <i>Re</i> .. ..	262		
Stillwell v. Mellersh .. ..	259		
Stillwell v. Wilkins .. ..	137		
Strapp v. Bull .. ..	234		
Street v. Anderson .. ..	46		
Subal v. Jatindra .. ..	243, 255		
Subba v. Andemma .. ..	49, 88, 98		
Subbaiya v. Mustafa .. ..	7		
Subramanian v. Lutchman ..	217		
Subramanian v. Muthuswami ..	223		
Subramanya v. Appasami 45, 50,	156		
Sundaram v. Sankara 23, 51, 175,			
	176, 229		
Suprasanna v. Upendra ..	1, 22, 39,		
	40, 102, 114		
Surendro v. Doorgasoondery ..	83, 87,		
	201		
Surendra v. Sushil .. ..	127		
Surendra N. Banerjee's case ..	35		
Surgeant v. Read .. ..	55		
Sutton v. Jones .. ..	41		
Sutton v. Rees .. ..	72		
Suttya Sankar Ghosal v. Golap-			
<i>money Debee</i> .. ..	202		
Swain v. Smith .. ..	274		
Swan's Estate, <i>Re</i> .. ..	276		



# TABLE OF CASES CITED

XV

Syed Asad v. Wahidunnissa ..	43	Vishnu v. Revati .. .. .	159
Sykes v. Hastings .. .. .	130	Vishwanath v. Kanak .. .. .	141
Sykes v. Jolland .. .. .	130		
Thampy v. Ram Kurup .. .. .	158	Walker v. Bell .. .. .	73
Talbot v. Hope Scott .. .. .	132	Walters v. Woodbridge .. .. .	237
Taylor v. Eckersley .. .. .	53	Ward v. Swift .. .. .	71
Taylor v. Neate .. .. .	119	Warren, <i>Ex parte</i> .. .. .	10
Taylor v. Sweet .. .. .	192	Wasif v. Karnani Bank .. .. .	169
Teller v. Golam .. .. .	245	Waters v. Taylor .. .. .	115
Tewart v. Lawson .. .. .	265	Watkins v. Brent .. .. .	98
Thakoor Chunder v. Chowdhry ..		Weatherall v. Eastern Martgage Agency .. .. .	143
Chootee Singh .. 162, 167,	366	Webb v. Cashel .. .. .	276
Thakur Prasad v. Fakirullah ..	2	Well, <i>Re</i> .. .. .	261
Thayamal v. Sivaraman .. .. .	1	Wells v. Kelpin .. .. .	72
Thayumana v. Ramaswami .. .. .	64	Whitely v. Lowe .. .. .	81, 226
Thirukumaresan v. Subaraya ..	119	Whitefield, <i>Ex parte</i> .. 1, 16,	131
Thomas v. Brigstocke .. .. .	266	Wickens v. Townsend .. .. .	53, 244
Tillet v. Nixon .. .. .	152	Wilkinson v. Gungadhur 3, 4, 8,	35,
Toft v. Stephenson .. .. .	81	110, 206, 207, 228,	233
Toolsa v. Bombay Tramway Co., Ltd. .. .. .	175	Wilk's case .. .. .	26
Tribhuban v. Jamuna .. .. .	142	Willcock v. Terrell .. .. .	43
Tribhuwan v. Sri Narain .. .. .	7	Williams v. Babcock .. .. .	222
Truman v. Redgrave .. .. .	6	Wilson v. Greenwood .. .. .	117
Tullet v. Armstrong .. .. .	4	Wood v. Hitchings .. .. .	29
Tyrell v. Painton .. .. .	62	Wood v. Wood .. .. .	244
		Wren v. Kirton .. .. .	242
		Wyman v. Knight .. .. .	69
		Wynne v. Lord Newborough ..	199,
			201, 202
Umbica Churn Sarnakar v. A. C. Meik .. .. .	169	Yamin-ud-doulah v. Ahmed Ali Khan .. .. .	25, 269
Underhay v. Read .. .. .	71, 72	Yeshwant v. Shankar 23, 29, 45,	49,
Upendra v. Bhupendra .. .. .	157	98, 100,	188
Venkata Subha v. Lalitamba ..	88	Young, <i>In re</i> .. .. .	80
Vibhudapriya v. Lakshmindra 2,	25		
Veeraraghava v. Krishna .. .. .	123	Zohra v. Zobeda .. .. .	3, 87, 122
Velliappa v. Govinda .. .. .	20	Zohur v. Noor 10, 35, 36, 62,	64, 65,
Venkatalingam v. Venkataram ..	265		240
Venkatasami v. Stridavamma 50,	156		
Vine v. Raleigh .. .. .	63		







# SUPPLEMENT

## TO ]

### LAW RELATING TO RECEIVERS

**Chapter I (P. 2) : Powers of a Receiver.**—When a receiver is appointed under Order XL, rule 1, C. P. C. the property is in *custodia legis*. The receiver is an officer or representative of the Court. His possession is possession of the Court through receiver and when he is appointed to receive rent and profits of immoveable property, the tenant becomes virtually the tenant of the Court and the Court becomes his landlord.<sup>1</sup>

Under the provisions of Order XL, rule 1, Code of Civil Procedure a receiver is competent to enforce the cause of action of somebody else. He sues in a representative character. General law gives certain rights either to the deity or to the *Shebait*s or to both, Order XL gives the entirety of that right to the Official Receiver. The Official Receiver represents the deity as well as the collective rights of the *Shebait*s to sue. When the Receiver is enforcing the cause of action of the owner itself the person against whom relief is being claimed is alone a necessary party. The right of action of the deity and the right of action of all the *Shebait*s are represented by the Receiver.<sup>2</sup>

**Chapter I (P. 2): Property never vest in a Receiver.**—A receiver appointed under Order XL, C.P.C., which is made applicable by Sec. 182-A(4) of the U.P. Land Revenue Act, only holds the property committed to his control under the order of the court but the property does not vest in him.<sup>3</sup>

**Chapter I (P. 7) : Remedy of a third party.**—No doubt, Order XL, rule 1 will enable a court to hold an enquiry when a third person in possession of a property in respect of which a receiver was appointed objected to deliver possession to the receiver, with a view to ascertain if he was under a present liability to be removed from the present possession of the property. A person whose possession is sought to be

1. Ram Saran Das v. Smt. Shanti Devi, A.I.R. 1977 All. 175 at p. 175.  
2. Jogendra Nath Naskar v. Official Receiver, A.I.R. 1975 Cal. 389 at p.

401.  
3. Balkishan Gupta v. Swadeshi Polytex Ltd. (1985)-2 S.C.C. 167 at p. 169.



interfered with by the receiver can seek his remedy by an application to the Court which appointed the receiver or institute a separate suit with the receiver on the party array after obtaining sanction of the Court that appointed the receiver to establish his present right to possession. But then it cannot be said that the remedies are alternative and inconsistent. It will not be right to say that when once the stranger has chosen the summary remedy by filing an application under Order XL, rule 1(2), C. P. C., and when he has been unsuccessful in that application it is no longer open to him to file a fresh suit to establish his rights in the property. The enquiry that is contemplated in the earlier proceedings is only a summary remedy and the Court's jurisdiction to consider the matter in a separate suit is not in any way ousted.<sup>1</sup>

**Chapter I (P. 7) : A third person in possession of suit property should be impleaded so that genuineness of his claim be thrashed out.**—Order XL, rule 1(2), C.P.C. is an enactment for the benefit of the third parties and means that the wide words of sub-rule (1) are not to be construed to justify the court in removing from possession or custody of property a third party who has got a right to remain in possession or custody as against the parties to the suit. The words “who any party to the suit has not a present right so to remove” merely mean whom no party to the suit has a right so to remove. The proper course for the court below is to direct the appellant herein to move that court for impleading him as a party so that genuineness of his claim as a statutory cultivating tenant or otherwise would have been thrashed out.<sup>2</sup>

**Chapter I (P. 16) : Special Tribunal cannot take resort to appointment of a Receiver.**—A Special Tribunal with jurisdiction restricted by the enactment under which it is created can function only within its express and defined limitations. If Sec. 32 of Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 makes it clear that the Tribunal's seisin over the property in dispute is limited to the making of the final order after inquiry, it appears that there is no warrant for resorting to the provisions of Order XL of the Civil Procedure Code, or to the inherent powers exercisable under Sec. 151, C.P.C. for making an interim order appointing a receiver.<sup>3</sup>

**Chapter I (P. 16) : Inherent power to appoint a Receiver.**—In the exercise of its inherent power, it is competent to the Court to

1. *Aduvatnu Poyil Thamasikkum Thazha Narukkoth Raghavan Nair v. Kalliani Pallikharamma's Children Kallangadi Edathil Appu Kidavu*, A.I.R. 1980 Ker. 4 at p. 10.  
2. *Dale Narayanana Rao v. Kallu*

*Nookaraju*, 1985 (2) Andh. L.T. 151 at p. 154.  
3. *Mohammed Hidayat Ali v. Alop Shanker*, A.I.R. 1971, A.P. 376 at p. 378.



appoint a receiver even on the assumption that the contentions of the learned counsel for the appellants as to the limitations of Order XL, rule 1, sub-rule (2), are sound.<sup>1</sup>

**Chapter I (P. 26) : Appointment of a Receiver set aside in appeal—Directions for impartial Receiver appointment given.**—Even though the choosing of a person for being appointed as receiver is a matter of judicial discretion to be determined by the Court having regard to the circumstances of the case, it is competent for the Appellate Court to set aside the order when it is found that the selection and appointment of a particular person has been made without proper exercise of judicial discretion. In the present case, having regard to the facts and having regard to the objections raised by some of the parties to the suit, the appointment of Receiver is not properly made. Accordingly, the order of the Court below appointing receiver is set aside and the Court below is directed to select a proper person bearing in mind the fact that he has got to be a disinterested person and not concerned with the litigation going on between the parties.<sup>2</sup>

**Chapter I (P. 26) : Ground mentioned in Memo of appeal but not argued—No grievance can generally be made.**—It is not unusual for parties and counsel to raise innumerable grounds in the petitions and memoranda of appeal etc., but, later confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable. No party or counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. If indeed any ground which was argued was not considered it should be open to the party aggrieved to draw the attention of the court making the order to it by filing a proper application for review or clarification.<sup>3</sup>

**Chapter I (P. 26) : Discretion exercised by trial court has great weight.**—The opinion of the Court of first instance in the matters of appointment of receiver is of great weight. It is probably the best tribunal to decide whether it is necessary or expedient having regard to the circumstances of the case, that a receiver should be appointed, and a party, who, in appeal, attacks the exercise of that discretion, should show that the discretion has been improperly exercised.<sup>4</sup>

1. Shavax A. Lal v. Syed Masood Hosain, A.I.R. 1965 A.P. 143 at p. 156.  
2. T.L. Krishna Upadhyaya v. Gowramma, A.I.R. 1971 Mys. 258 at p. 259.

3. Daman Singh v. State of Punjab, (1985) 2 S.C.C. 670 at p. 682.  
4. Kamal Chaudhary v. Rajendra Chaudhary, A.I.R. 1976 Pat. 366 at pp. 371, 372.



**Chapter I (P. 26) : Discretion exercised not to be lightly interfered in appeal.**—A discretion exercised by the Trial Court in the matter of appointment of a receiver after considering the facts of the case ought not to be interfered with in appeal unless it is shown that it was improperly exercised or that the determination was contrary to law.<sup>1</sup>

**Chapter I (P. 27) : Power to appoint discretionary.**—In the matter of appointment of receiver of the property in dispute before it, the Court had a wide discretion. But it would not appoint a receiver unless from the materials brought to its notice it was satisfied that it was just and convenient to do so. Different considerations would arise in different cases, but in a case of disputed title, where the plaintiff sought recovery of possession, the Court would appoint a receiver if it was satisfied on two matters: (1) that the title which the plaintiff had set up was *prima facie* good; and (2) that the property was in danger of being wasted or dissipated or being so dealt with as to get irretrievably out of the reach of the plaintiff who was *prima facie* entitled to its possession.<sup>2</sup>

It is well known that receiver is to be appointed as a matter of course when a partnership is dissolved under the orders of a court, or if the partnership has already been dissolved and any of the parties has come to the Court for seeking his reliefs due to him as an ex-partner. A receiver can be appointed to take charge of the partnership assets, collect the same and convert it into cash, if necessary, and to discharge the debts of the firm and thereafter divide the surplus between the partners. In a suit for dissolution of a partnership a receiver can also be appointed before the final adjudication if the circumstances of the case justify such a measure.<sup>3</sup>

**Chapter I (P. 27): Principles governing appointment of a receiver.**—The well accepted general principle is that a receiver should be appointed where it is just and convenient. As to whether in a particular case it is just and convenient to do so the question would have to be determined on the particular facts of the case. The underlying principle under Order XL, rule 1, C.P.C. relating to the appointment of a receiver, is that the subject matter of the suit should be allowed to remain intact in order to see that at the end of the final adjudication, the parties might be entitled to the benefit thereof. It was further held that no doubt ordinarily it is only where the Court is satisfied that there is danger apprehended of the subject matter of the suit becoming unavail-

1. Nihalchand L. Jai Narain v. Ram Niwas Munna Lal, A.I.R. 1968 P.&H. 523 at pp. 525, 526.  
2. Kama! Chaudhary v. Rajendra

Chaudhary, A.I.R. 1976 Pat. 366 at p. 369.  
3. Sudhansu Kanta v. Manindra Nath, A.I.R. 1965 Pat. 144 at p. 146.



able, if the defendant were allowed to remain in possession of the same, or that the plaintiff would not be in a position to realise the fruits of his decree if he succeeds unless the property were protected, then the Court would be inclined to appoint a receiver.<sup>1</sup>

In another case it was held that the principles for the appointment of a receiver are; that the question of appointing a receiver is a matter resting in the discretion of the Court; that a receiver should not be appointed unless the party has an excellent chance of succeeding in the suit; that plaintiff himself shall show that there was some emergency or danger or loss that may be caused to the right involved in the suit; that an order appointing a receiver shall not be made if it has the effect of depriving a defendant of *de facto* possession; that, however, the position would be different if the property is shown to be *in medio* that is to say, in the enjoyment of no one, and that the Court should always look into the conduct of the parties who seek for the appointment of a receiver.<sup>2</sup>

The appointment of receiver is recognised as one of the harshest remedies which the law provides for the enforcement of rights and is allowable only in extreme cases and in circumstances where the interest of the person seeking the appointment of a receiver is exposed to manifest peril. Therefore, this exceedingly delicate and responsible duty has to be discharged by the Court with the utmost caution. The principles to be followed for appointment of receiver as laid down are these; not only must the plaintiff show a case of adverse and conflicting claim to property, but he must show some emergency or danger or loss demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important consideration. An order appointing a receiver will not be made where it has the effect of depriving a defendant of a *de facto* possession since that might cause irreparable wrong. The high prerogative act of taking property out of the hands of one and putting it in pound under the order of the judge ought not to be taken except to prevent manifest wrong imminently impending.<sup>3</sup>

**Chapter I (P. 27) : Consideration determining the appointment of a receiver.**—The considerations for the appointment of receiver which determine the grant or refusal rest on well-known principles but no Court has been able to lay down unvarying and inflexible rules applying to all circumstances and eventualities. The facts of the actual

1. Pritam Singh v. Sarup Singh, 1978 (80) P.L.R. 316 at pp. 319, 320.  
2. Srinivasa Rao v. Baburao, A.I.R.

1970 Mys. 141 at p. 148.  
3. Rasi Dei v. Bikal Maharana, A.I.R. 1965 Orissa 20 at p. 21.



case are of primary consideration which determine the exercise of the discretionary power. It is true that the power is exercised sparingly and with caution and circumspection where circumstances require a summary relief. A receiver is to be appointed only in a clear case and where there is necessity or occasion for the appointment. Appointment of a receiver must not be mere weapon of coercion and the Courts do not exercise this discretionary power in the absence of a strong case. The discretion of the Trial Court ought not to be disturbed where it is rested on a consideration of the facts and circumstances bearing in mind the principles applicable.<sup>1</sup>

It may be remembered that the appointment of a receiver is, as a general rule, discretionary and not a matter of right. A Court will make an appointment of a receiver with great caution and circumspection. In a case where the remedy of the appointment of a receiver seems necessary to prevent fraud, to protect and preserve the property against an imminent danger of loss or diminution in value, destruction, squandering, wastage or removal from jurisdiction, the Court may appoint a receiver. It may further be stated in this connection that a court in exercise of its discretion to appoint or refuse a receiver must take into account all the circumstances and facts of the case, the presence of conditions and grounds justifying the relief, ends of justice, the rights of all the parties interested in the subject-matter and the adequacy of other remedies.<sup>2</sup>

**Chapter I (P. 27) : “Just and Convenient” explained.**—In the undernoted case the tenants for several *faslis* have been playing the game of hide and seek armed with interim orders and they have been doing all the damage they could possibly do and thereby depriving the appellant trust of its legitimate share. Therefore, it was concluded that these circumstances would be enough to bring the case within the meaning of “just and convenient” as contemplated under Order XL, rule 1.<sup>3</sup>

**Chapter I (P. 27) : Power of the Court.**—Under Order XL, C.P.C. a Receiver is an officer or representative of the Court and he functions under its directions. The Court may, for the purpose of enabling the receiver to take possession and administer the property, by order, remove any person from the possession or custody of the property, sub-rule (2) of rule 1 of the Order limits that power in the

1. Nihalchand L. Jai Narain v. Ram Niwas Munna Lal, A.I.R. 1968 P.&H. 523 at p. 526.  
2. S.B. Industries Freegunj v. United Bank of India, A.I.R. 1978 All.

189 at pp. 190, 191.  
3. Velur Baithinathaswami Devasthanam Vaithiswarankoil v. Arumugho Mudaliar, A.I.R. 1977 Mad. 202 at p. 208.



case of a person who is not a party to the suit, if the plaintiff has not a present right to remove him. But when a person is a party to the suit, the Court can direct the receiver to remove him from the possession of the property, even if the plaintiff has no present right to remove him.<sup>1</sup>

**Chapter II (P. 44) : Court can appoint receiver in a mortgage suit.**—It is now settled that the Court should appoint a receiver in a mortgage suit as in a suit of any other nature when it is just and convenient to do so.<sup>2</sup>

The fact of interest being in arrears, with something more, would be sufficient for the Court to exercise its discretion and appoint a receiver on the footing that it was just and convenient to do so.<sup>3</sup>

**Chapter II (P. 61) : Effect of appointment of receiver.**—In the undernoted case it was held that if the injunction was not secured by the plaintiff, it would have been open for the defendant to file a suit against the plaintiff for mandatory injunction requiring him to remove himself from the premises on the ground that he has no right, title and interest in the same and that the premises vest exclusively in defendant Nos. 1 and 2. In the context of the facts of the case such a suit would be perfectly a valid suit and High Court would have probably decreed that suit. What is derived is that this is not a case where the plaintiff is admittedly in possession of the suit premises and that by virtue of the order of appointment of receiver the plaintiff is going to be dispossessed. Moreover, by an order of appointment of receiver itself, the plaintiff does not get dispossessed. The Receiver acts on behalf of the legitimate owner of the suit premises.<sup>4</sup>

**Chapter II (P. 72) : Receiver cannot be appointed to dispossess a person.**—The receiver cannot be appointed when the effect of the appointment is to deprive a person from his possession.<sup>5</sup>

**Chapter II (P. 80) : Suit against receiver—Leave may be obtained either before or after action is commenced.**—Leave to sue against the receiver can be obtained either before the action is commenced or

1. *Shavax A. Lal v. Syed Masood Hosaih*, A.I.R. 1965 A.P. 143 at p. 156.  
2. *Industrial Finance Corporation of India v. Thakur Paper Mills Ltd.*, A.I.R. 1972 Pat. 83 at p. 86.  
3. *Bai Fatubai Fidaali Lala v. Yusufally Esmailjee Nagree*, A.I.R. 1977

Bom. 170 at p. 174.  
4. *Dinyar Rustom Patell v. Rustom J.R. Patell*, 1986 Bom. R.C. 362 at p. 380.  
5. *Rogunatrao M. Dessai v. Mineira Nacional Ltd.*, A.I.R. 1974 Goa. 41 at p. 41.



after the action is instituted. In this case, leave is obtained during the pendency of the proceedings and hence the defect is cured.<sup>1</sup>

When a court puts a receiver in possession of property, the property comes under Court's custody, the receiver being merely an officer or agent of the Court. Any obstruction or interference with the Court's possession sounds in contempt of that Court. Any legal action in respect of that property is in a sense such an interference and invites the contempt penalty of likely invalidation of the suit or other proceedings. But, if either before starting the action or during its continuance, the party takes the leave of the Court, the sin is absolved and the proceeding may continue to a conclusion on the merits.<sup>2</sup>

**Chapter II (P. 88) : Order XL, rule 1, C.P.C. applies to appointment in pauper suit.**—When the provisions of the Code were amended the words “subject of a suit or attachment” were deleted by the Legislature. This is significant. This shows that the Legislature thought it fit to remove the restraint which formerly existed in respect of the power of the Court to appoint a Receiver only in respect of properties which were the subject matter of a suit or attachment. Their Lordships, therefore, held that where an application has been made for leave to sue *in forma pauperis*, a Receiver could be appointed under Order XL, rule 1 pending decision of the application.<sup>3</sup>

**Chapter III (P. 96) : Order regarding non-appointment of a receiver does not bar appointment at a later stage.**—Appointment of receiver depends on the facts and circumstances prevailing at the time of the application. If on consideration of the facts and circumstances existing at a particular point of time the court did not deem it necessary to appoint a receiver, it does not stand to reason to hold that for all times to come the Court should be precluded from passing a different order even there is material change in the facts and circumstances of the case.<sup>4</sup>

**Chapter III (P. 117) : Appointment of receiver in a suit for dissolution of partnership.**—Even in a case of dissolution of partnership when the Court finds that the firm must be dissolved, a receiver should be appointed as a matter of course, equally applies when the suit is for the distribution of the assets of a dissolved firm. A division Bench

1. S.V. Sreekanthayya v. Lakshmi Hardware Stores, A.I.R. 1978 Knt. 100 at p. 101.  
2. Everest Coal Company (P.) Ltd, v. State of Bihar, 1978 S.C.J. 188 at p. 189.

3. Ram Khelawan v. Sudama Devi, A.I.R. 1964 All. 366 at p. 368.  
4. Anirudha Adhikari v. Amarendra Adhikari, A.I.R. 1988 Orissa 42 at p. 43.



of Patna High Court in *Sudhansu Kanta v. Manindra Nath*,<sup>1</sup> held that a receiver is to be appointed as a matter of course when a partnership is dissolved under the orders of the Court, if the partnership has already been dissolved and any of the parties has come to the Court for seeking his relief as an ex-partner. A receiver can be appointed to take charge of the partnership assets, collect the same and convert it into cash if necessary to discharge the debts of the firm and thereafter divide the surplus between the partners and in a suit for dissolution of a partnership, a receiver can also be appointed before the final adjudication if the circumstances of the case justify such a measure.<sup>2</sup>

The Allahabad High Court in the case of *Khaderan Ram v. Sharda Prasad*<sup>3</sup> held that if the partnership has been dissolved or is sought to be dissolved by the filing of the suit receiver can be appointed at a matter of course provided his appointment is sought for the taking of the assets of the firm and ultimately for distribution thereof to the partners and the relationship between the partners is extremely strained. In the cases in which one of the partners has completely excluded the other from the management and the profits of the firm and funds are misappropriated, receiver can again be appointed, but for a running firm, the dissolution of which is not established, the Court will be slow in appointing a receiver because that will affect the position of the person who is running the business and is in *de facto* possession of the same.

**Chapter III (P. 156) : Appealable orders indicated.**—It may further be pointed out that the scheme of Order XLIII, C.P.C. in making certain orders appealable is of a two-fold character. In a number of cases an appeal has been allowed from all kinds of orders passed under a certain rule, while in other cases the right of appeal has been limited only to certain specific orders passed under a certain rule. Reference in this connection may be made to Order XLIII, rule 1(v) and rule 1(t). In these rules appeal has been allowed against the certain specific orders but not against all the orders that could be made under these rules. Order XL, rule 1 falls in the category of cases where all orders made under it have been made appealable and it has not been said that the only order appealable is the one appointing a receiver. Whenever an order can be brought within the purview of Order XL, rule 1 it at once becomes appealable under the provisions of Order XLIII, rule 1(s).<sup>4</sup>

1. A.I.R. 1965 Pat. 144.

2. Sheonarain Jaiswal v. Shree Kripa Shankar Jaiswal, A.I.R. 1972 Patna 75 at p. 78.

3. A.I.R. 1986 All. 34 at p. 39.

4. Srinivasa Rao v. Baburao, A.I.R. 1970 Mys. 141 at p. 147.



**Chapter IV (P. 170): Authority to appoint a Receiver.**—Order XL, rule 1 of the Civil Procedure Code, empowers a court to appoint receiver of any property where it appears to the Court to be just and convenient that such appointment should be made. The exercise of this power is however limited by the proviso that the appointment of receiver will not authorise the Court :

“To remove from the possession or the custody of property any person whom any party to the suit has not a present right so to remove.”

The proviso clearly refers to a case where a person in possession is a third person and the parties to the suit have no present right to disturb his possession.<sup>1</sup>

**Chapter IV (P. 170) : Power of a Receiver.**—Under Order XL, rule 1 of the Civil Procedure Code, the Court may grant to the receiver such powers as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of rents and profits thereof, the application and disposal of such rents, and the execution of instruments in writing etc., as the owner himself has or such of those powers as the Court thinks fit. It may confer upon him only such powers as may be necessary to preserve the property pending litigation so that it may not be damaged or dissipated.<sup>2</sup>

**Chapter IV (P. 170) : Power of a Receiver to appoint agent.**—In the undernoted case the receiver had acted in the most proper manner. There is no basis for the allegation made by the petitioner that he had been coerced to appoint the respondent Kishori Lal Goenka as his agent. The fact that at one stage the respondent had filed an application to Supreme Court to remove the receiver can in no manner be said to have influenced the decision of the receiver to appoint the respondent as his agent. There are no grounds to think that the receiver had acted either improperly or under coercion.<sup>3</sup>

**Chapter IV (P. 170) : Power of Receiver to grant permanent lease.**—The admitted position of law is that a debutter property cannot be sold or leased out except on the ground of urgent need or legal necessity. The leasing out or sale of debutter property for such purpose can be made by the *shebait*s and trustees for the time being. Merely

1. Vijay Kumar v. B.K. Thapper, A.I.R. 1976 J.&K. 30 at p. 32.  
2. S.B. Industries Freegunj v. United Bank of India, A.I.R. 1978 All.

189 at p. 192.  
3. Bhagwati Debi Goenka, Smt. v. Kishorilal Goenka, A.I.R. 1974 S.C. 2288 at p. 2289.



because a receiver has been appointed by High Court, on the application of one of the *shebait*s and trustees the Court should not grant a permanent lease for 99 years in respect of a valuable debutter property.<sup>1</sup>

**Appendix B (P. 284) : Second application for appointment of a Receiver not barred.**—Where new facts are alleged to have arisen in new circumstances, plaintiffs in a fit case can file a fresh application for the appointment of a receiver.<sup>2</sup>

**Appendix B (P. 284) : Power of the Court to grant interim injunction.**—The Bombay High Court in the undernoted case held that the order of injunction passed by High Court in the Notice of Motion was after all interlocutory order and the Courts seized with the suit have always the power to examine the various pieces of evidence already on record with a view to ascertain whether any of the parties are entitled to any further interlocutory relief or not.<sup>3</sup>

**Appendix B (P. 284) : Enquiry is of a summary nature and is not final.**—The enquiry under Order XL, rule 1(2), C.P.C. is of a summary nature. The earlier view as reflected by the decision in *Venkappa Bhatta v. Inthra Crasta*<sup>4</sup> was that an order under Order XL, rule 1(2) is final and not liable to be questioned in a fresh suit. Now the position is that the remedies are not alternative and inconsistent. Even after getting defeated in a summary enquiry under Order XL, rule 1(2) the defeated party could have his remedy in a detailed enquiry in a separate suit. The decision in the enquiry under Order XL, rule 1(2) is no bar to that suit.<sup>5</sup>

**Appendix B (P. 285) : Appointment of receiver of educational institution not to be done if it tends to create confusion.**—In the instant case it is hardly necessary to stress that the Court should not have passed order which was bound to add to the confusion already prevailing, the worst sufferer being the institution itself. Dual control would be exercised—one by the Receiver and the other by the authorities, the latter being not parties to the suit. Neither is it difficult to visualize the serious complications which were bound to arise with the receiver also holding election in addition to the one which had been started by the defendant. Far from being just and convenient, the appointment of a receiver was bound to lead to chaos and prove

1. Sri, Sri Iswar Jagannath Deb Jew v. Fatick Chand Seal, A.I.R. 1972 Cal. 489 at p. 494.  
2. Kothari Plantations & Industries Ltd., v. Dakshinpat Satara, A.I.R. 1973 Gau. 74 at p. 76.

3. Dinyar Rustom Patell v. Rustom J.R. Patell, 1986(2) Bom. C.R. 222 at p. 228.  
4. 1973 K.L.T. 1037.  
5. Madhavan Sundanda v. Krishna Chethoharan, (1987) 5 I.J. Reports 5.633 at p. 5.635 (Ker.).



counterproductive in the context of well being of the College which alone was relevant for deciding whether appointment of receiver was just and convenient.<sup>1</sup>

**Appendix B (P. 285) : Receiver only in cases where it is just and convenient.**—In the undernoted case the learned Single Judge in exercising the discretion has not taken into account the factors necessary for the appointment of Receiver and also the alternative prayer for the preservation and protection of the property in dispute by putting the appellants to terms, which could easily be done by issuing a temporary injunction as well, because appointment of a Receiver in a suit for eviction of possession of the property is one of the harsher remedies, which the law provides for the enforcement of rights and is allowable only in extreme cases and in circumstances where the interest of the person seeking the appointment of Receiver is exposed to manifest peril.<sup>2</sup>

**Appendix B (P. 287) : Scramble to get possession—Appointment of receiver justified.**—In the undernoted case the respondents were taking a chance and were proceeding in a great hurry to construct the *galas* and to come to Court with *fait accompli*. This conduct should disentitle them any equitable considerations from this Court. *Prima facie*, defendant No. 5 and the respondents were in collusion with one another. In any event, there is no evidence of the respondents being in possession of the godowns on the date of filing of this suit. There was only a scramble to get into possession somehow, after knowing full well, that the plaintiffs are opposed to defendant No. 5 dealing with the property, and the matter is under consideration by the Court. Hence, the order appointing receiver was confirmed.<sup>3</sup>

**Appendix B (P. 288) : A partner can be appointed as a receiver.—as receiver his character will change.**—In the undernoted case one cannot overlook the fact that defendant No. 1 is licence-holder for exhibiting film and under it there are sufficient restraints on him in regard to accounts, in regard to furnishing of accounts, in regard to sale of tickets, in regard to payment of taxes and submission of returns. In view of these restrictions, even if defendant No. 1 acts with little recklessness, it is not possible to say that his action can be termed as a total misconduct, even if it is that he is working in a partnership. Therefore it was held that defendant No. 1 being partner can be appointed as a Court receiver. His character to Runa Cinema theatre will

1. Ram Pal v. Committee of Management, 1987 All. L.J. 211 at p. 214.  
2. Mohd. Yousuf Mohd. Maqbool, M/s. v. Bakshi Anwar Aftab, 1988

K.L.J. 1 at p. 16.  
3. Vasantilal Lallubhai Patel v. Shankarlal Bechardas Patel, 1987 (3) Bom. C.R. 454 at p. 458.



ultimately be changed. When once he is appointed, he will be a third person in law. In fact it was suggested earlier before hearing was started. However, there was no resistance to it as such, although it was contended that defendant No. 1 should not be appointed. Further it was observed that it would be just and convenient and proper also that defendant No. 1 is put in charge of the business as a Court receiver.<sup>1</sup>

**Appendix B (P. 288) : Appointment of receiver in a partnership suit.**—It is undoubtedly true that the Court would not appoint receiver in every dispute between the partners, but the court would certainly not refrain from exercising jurisdiction when the majority partners are trying to defeat the claim of a minority partner. The fear or the apprehension about the closure of business is unfounded because even though the Receiver is appointed, he will be directed to permit the defendants to carry on business as the agent of the receiver.<sup>2</sup>

**Appendix B (P. 292) : Receiver not an agent of the party at whose instance appointed.**—In the undernoted case the Receiver was not an agent of the company and he cannot act beyond the scope of his appointment which specifically empowers him to take possession of the vehicle. As such, neither under the order of appointment nor otherwise they could enter into any settlement by giving up the rights of the company not only to the possession of the car but also of the ownership and for a sum of Rs. 11,351 only or at all.<sup>3</sup>

**Appendix B (P. 296) : Receiver can maintain winding up process of the debtor company.**—Under Order XL, rule 1(d), of the Code of Civil Procedure, the Court can also confer on the Receiver such of powers as the Court thinks fit. It is implicit in this apparently wide power that it shall be confined to the scope of the Receiver's administration of the estate. If, for the proper and effective management of the estate of which the receiver has been appointed the Court thinks fit that it shall confer power on the said receiver to take steps for winding up of the debtor company, it must be conceded that the Court will have power to give necessary directions to the Receiver in that regard.<sup>4</sup>

**Appendix B (P. 297) : Effect of appointment of a receiver in execution.**—When a receiver is appointed in execution under Sec. 51, C.P.C., the receiver will be entitled to all the powers under Order XL, rule 1, C.P.C., and the administration of the estate by him as receiver will be governed by the provisions of Order XL, and by the principles

1. Rukman Kishanrao Pensalwar v. Gopinath Ganpatrao Pensalwar, 1986 Mah. L.R. 66 at p. 82.  
2. Rasilaben Kantilal Kansara, Smt. v. Amratlal Babubhai, 1983 (3) Bom. C.R. 620 at pp. 627, 628.

3. Chiranjilal Agarwalla v. Jai Hind Investments and Industries Pvt. Ltd., A.I.R. 1978 Cal. 177 at p. 187.  
4. Harinagar Sugar Mills Co. Ltd., Bombay v. M.W. Pradhan, A.I.R. 1966 (S.C.) 1707 at p. 1709.



which apply to a receiver appointed in ordinary suits and proceedings, other than execution proceedings. So far as the powers and duties of the receiver are concerned there is no difference between a receiver appointed in a suit or other proceeding under Order XL and a receiver appointed in execution under Sec. 51, Cl. (d). The receiver is appointed for the purpose of reducing the property to *custodia legis* for the Court to exercise control over the property so recovered by the receiver so that it can be administered and distributed according to the relative rights of parties over the fund or the estate in respect of which the receiver is appointed. The receiver is appointed not merely for the benefit of the decree-holder, but is appointed for the benefit of the judgment-debtor as well. The negative effect of the receiver, so far as the judgment-debtor is concerned (in case the property in respect of which the receiver is appointed happens to be a debt due by a third party), is that the judgment-debtor is prevented from collecting the amounts due from the *garnishee* and any payment made by the debtor (*garnishee*) to the judgment-debtor would not operate as a discharge and that debtor would still continue to be liable to pay the amount to the receiver.<sup>1</sup>

**Appendix B (P. 299) : Position and status of receiver.**—The appointment of a receiver does not in any way affect the right to the property over which he is appointed. Where the right is the matter in dispute, the Receiver merely holds the property for whoever may ultimately be held to be entitled to it. If the appointment has been made on the application of an incumbrancer, the Court, when the incumbrance has been cleared off, restores the possession to him from whom it was taken. The title is in no way prejudiced in theory or principle, by the appointment.<sup>2</sup>

**Appendix B (P. 299) : “Power” explained.**—Like most words in the English language, the word “power” also has no fixed meaning. It takes its meaning, content and scope from the context, the settings, the background in which, and the purpose for which it is used. Basically, it means authority and one must distinguish between the authority itself and the manner of its exercise or its nature. Whether any discretion is left or not and whether any direction is imperative or directory relate to the manner and exercise of the power and not to the basic ingredient of authority itself. Without authority, a valid act cannot be done irrespective of whether the act is discretionary on the part of the doer of the act, or, he is bound to do it. In both situations, he must have authority.<sup>3</sup>

1. Arumugha Thevar v. Palaniammal, A.I.R. 1973 Mad. 426 at p. 428.  
2. B. Kishorechand v. Karnataka Bank, 1986 (1) Bangalore L.J. 9 at

pp. 13,14 (Knt.).  
3. Seth Loonkaran Sethiya v. Ivan E. John, A.I.R. 1975 All. 113 at p. 121.



**Appendix B (P. 299) : Powers of Receiver.**—A Receiver appointed under Sec. 51 of the Code of Civil Procedure, 1908 will be able to realise the amounts due from a *garnishee* and his powers are a kin to the powers of a Receiver appointed under Order XL, rule 1 of the Code of Civil Procedure, 1908. But he would not have any beneficial interest in the assets of the judgment-debtor. He collects the debts not as his own but as an officer of the Court.<sup>1</sup>

**Appendix B (P. 300) : Appointment of a receiver.**—In the under-noted case there is an objection by the respondent to the maintainability of the first appeal from order. The submission is that the order under appeal is not an order under rule 1 or rule 4 of Order XL of the Code of Civil Procedure, for it is only such an order which is appealable. The plaintiff had sought the appointment of a receiver under Order XL rule 1, C.P.C. The Court refused to appoint a receiver but it appears to have made an order under Sec. 151, C.P.C., which order is not appealable under Order XLIII, rule 1(5), C.P.C. The objection raised by the respondent succeeds.<sup>2</sup>

**Appendix B (P. 300) : Order appointing a person as receiver is appealable and not a finding that it is just and convenient to appoint a receiver.**—Every order of appointment of receiver includes a finding that it is just and convenient to appoint a receiver, thereby creating an office of receiver and a direction nominating a certain person to fill the office of receiver as created. Actually the order appointing a receiver has to follow the finding that it is just and convenient to appoint a receiver. This is clear from the words used in Order XL, rule 1, C.P.C. “where it appears to the Court to be just and convenient, the court may by order (a) appoint a receiver,” which mean that appointing a person as a receiver is the order to be passed under rule 1; deciding that it is just and convenient is only a finding on which the order is to be passed. An appeal is provided by order LIXII, rule 1(s), C.P.C. from and “order” made under rule 1 of Order XL, that is from the order or direction appointing a certain person as a receiver and not from the finding that it is just and convenient to appoint a receiver or creating an office of receiver. In the instant case the order appealed against only a finding was recorded that itw as just and convenient to appoint a receiver and a receiver deserved to be appointed. No order appointing a particular person as receiver was passed by the order appealed against. On the other hand the parties were required to furnish the name of the person to be appointed receiver within seven days and it was provided therein that in case the parties fail to do so a receiver shall be nominated by the

1. *Balkrishna Gupta v. Swadeshi Polytex Ltd.*, 1985 Tax L.R. 2066 at p. 2079 (S.C.) : A.I.R. 1985 S.C.

520.  
2. *Joti Prasad v. Rameshwar Nath*, 1987 (13) A.L.R. 84 at p. 85.



Court. The appeal thus, is an appeal against the finding that it was just and convenient to appoint a receiver and creating the office of receiver and not against an order "appointing a certain person as a receiver".<sup>1</sup>

**Appendix B (P. 303) : Duty of Court in passing accounts.**—At the time of passing of receiver's accounts there is an obligation on court to see and check the accounts with reference to the vouchers produced by the receiver, issue notices to all the parties interested in the litigation and finally pass the accounts. After such passing of the accounts, it would not lie in the mouth of the parties at any time thereafter to contend that any one or more of the entries in such accounts cannot be relied upon or acted upon. In matters dealing and concerning receivers, courts have a special duty to perform as its honour is involved. The receiver being an officer of court and being the person *in custodia legis* of the estate which he is asked to administer, the Court takes it for granted that its officer is managing such estate property and in the interest of the parties concerned, bearing always in mind that such administration of the estate involves the prestige and honour of the Court which has appointed him. The machinery of court is set at work in the checking and passing of the accounts filed by receivers.<sup>2</sup>

**Appendix B (P. 303) : Power of Receiver and duty of court to call for documents.**—On a careful consideration of the law to the subject, the relevant principles of law to be applied in such cases are : (i) the receiver comes in possession of a property as an officer of the Court by virtue of his appointment by the Court in that behalf, (ii) such property is *custodia legis concomitant* with the appointment of the receiver, (iii) the dependence of a suit in the Trial Court, unless there be a specific order of the Court to the contrary, sanctions the continuance of a receiver to remain in possession of such property even after its disposal by the Trial Court until he is discharged and (iv) the liability for rendering accounts after the disposal of the suit in the Trial Court does not cease *ipso jure*.<sup>3</sup>

**Appendix B (P. 305) : Provision explained.**—The scheme of rule 4 of Order XL of the Civil Procedure Code as also appears from the discussions in the Nagpur case in *Bari Bahoo, Smt. v. Sharda Prasad*<sup>4</sup> contemplates the presence of the receiver. If the receiver would have been alive, it was not necessary that the matter in question could be investigated only by a separate suit and not in a summary proceeding.<sup>5</sup>

1. Ram Babu Verma v. Om Prakash Verma, A.I.R. 1986 All. 355 at p. 356.
2. K. Raghavan v. K. Venkatarama Iyer, A.I.R. 1968 Mad. 218 at p. 219.
3. Lal Bihar Singh v. Tipan Singh,

- A.I.R. 1977 Pat. 226 at p. 228.
4. A.I.R. 1954 Nag. 366.
5. Madan Mohan Misir v. Pt. Girg-dharan Prasad Missir, A.I.R. 1978 Pat. 80 at p. 82.



# THE LAW RELATING TO RECEIVERS IN INDIA, PAKISTAN & BURMA

## CHAPTER I.

### GENERAL FEATURES OF THE JURISDICTION

§ 1. Definition and nature of office of receiver. § 2. Appointment of a receiver is a form of specific relief. § 3. Law relating to receivers. § 4. Jurisdiction to appoint receivers. § 5. Exercise of jurisdiction is discretionary. § 6. Enforcement of orders and decrees.

§ 1. A RECEIVER is ordinarily an [impartial and} indifferent (1) person between the parties to a cause, appointed by the Court to receive and preserve the property or fund in litigation *pendente lite* when it does not seem reasonable to the Court that either party should hold it ; (2) or where a party is incompetent to do so as in the case of an infant. (3) The effect of the appointment is not to prejudice the case in any way. The only object and effect of it is to maintain things in their present condition during the pendency of the suit. (4) The terms of O. XL, r. 1 of the Civil

Definition  
and nature  
of office of  
Receiver.

(1) *I.e.*, disinterested : [Alderson, 2] ; *Bhupendra v. Monohar*, 28 C. W. N. 86 ; and stake-holder : *Dwijendra v. Jogesh*, 39 C. L. J. 40.

(2) High on Receivers, s. 1 ; Kerr on receivers, 4 ; Eighth Edition ; *Eastern Mortgage Co. v. Muhamad*, 52 C. 914 : 41 C. L. J. 571. But the Court sometimes appoints (not uncommonly in partnership cases) one of the parties to be receiver. *Suprasanna v. Upendra*, 18 C. W. N. 533 (partition) ; *Rudreswari v. Ramabati*, 1952 P. 231 (mortgage) ; *Omar v. Razzak*, Pak. L. D. 1956 Sind 85 (partnership).

(3) Kerr, 4. It was formerly considered that in the case of infants the Court had jurisdiction on petition to pronounce an order for a receiver as well as for guardian and maintenance, but it was held by Lord Hardwicke that the Court had not jurisdiction to appoint a receiver unless a cause be depending. *Ex parte Whitfield*, 2 Atk., 315 ; Bennet on Receivers, 3. See 42 C. W. N. 92, 94.

(4) *Satya Narain v. Keshabati*, 18 C. W. N. 537 ; *Thayamal v. Sivaraman*, 1953 T.-C. 228 ; 1954 Bhopal 7.



Procedure Code of 1908 are wider than the corresponding s. 503 of the Civil Procedure Code of 1882 and do not provide that the appointment of a receiver should be confined to a suit. An application for the appointment of a common manager under s. 93 of the Bengal Tenancy Act is an original proceeding contemplated in s. 141 of the Civil Procedure Code to which the procedure under O. XL, r. 1, seems to be applicable.(1) A receiver may be appointed of property in the hands of a common manager appointed under s. 95 of the Bengal Tenancy Act.(2) A receiver is a ministerial officer originally of the Court of Chancery and, as a general rule, a mere custodian having no powers except those conferred by the order of his appointment, though with the growth of equity jurisdiction it has become usual to clothe him with much larger powers than were formerly conferred.(3) A Court may appoint a receiver either on the application of parties or *suo motu*.(4) A receiver is an officer of the Court through whom equity takes possession of the property, preserves it from waste and destruction, secures and collects the proceeds and ultimately disposes of them according to the rights and priorities of those entitled thereto, whether regular parties in the cause or only coming before the Court in a reasonable time and in the due course of procedure to assert and establish their claims. As the representative of the Court he is subject to its orders, accountable in such manner and to such persons as the Court may direct, and having in his character as receiver no personal interest save that arising out of his fiduciary capacity and responsibility for the correct and faithful discharge of his duties. He is not the [agent or] representative of a party or parties but of the Court.(5) As such he cannot have legal representatives to succeed.(6)

---

(1) *Asad v. M. Hossain*, 43 C. 986 : 20 C. W. N. 1009 (*Thakur v. Fakir*, 21 I. A. 44 : 17 A. 106 followed). The relief of an aggrieved party to such an order is by way of an appeal and not by an application for revision.

(2) *Madaneswar v. Mahamaya*, 15 C. W. N. 672 : 13 C. L. J. 487.

(3) *Beach on Receivers*, s. 1. He does not represent the estate, but is merely an officer of the Court : *Miller v. Ram Ranjan*, 10 C. 1014.

(4) *Vibhudapriya v. Lakshmindra* 1927 P. C. 131 : 31 C. W. N. 1021

(in appeal) ; *Dan Prasad v. Gopi*, 36 A. 19 ; *Mathulla v. Ouseph*, 1952 T.-C. 332 ; *Ganpat v. Prahlad*, 1952 N. 253 (even on application of a third party interested) ; 1959 Mys. 35 ; 1955 M. 360.

(5) *Gluck and Becker, Law of Receivers of Corporations* s. 1, *Harihar v. Jahar*, 26 C. W. N. 992 ; *Eastern Mortgage Co. v. Muhamad*, 52 C. 914 ; *P. Lakshmi v. L. Lakshmi*, 1957 S. C. 314.

(6) *Krishnaswami v. Narainappa*, 1959 M. 209.



The main object of the appointment of a receiver is to protect the estate from unnecessary and expensive litigation, to preserve it for the equal benefit of those equally interested in its distribution and to keep the property at all times within the control of the Court by which the receiver has been appointed.(1) A receiver appointed by Court is a public officer holding lands in attachment within the meaning of s. 85 of Mad. Act VIII of 1865.(2) A receiver can only be properly granted for the purpose of getting in and securing funds which the Court at the hearing, or in the course of the cause, will have the means of distributing among the persons entitled to those funds.(3)

The receiver appointed in a particular suit is nothing more than the hand of the Court, so to speak, for the purpose of holding the property of the litigants whenever it is necessary that it should be kept in the grasp of the Court in order to preserve the subject-matter of the suit *pendente lite*. The position of a receiver is analogous to that of a curator appointed under Act XIX of 1841 who is a person claiming to be entitled to the effects of the deceased person whose estate he is appointed to manage.(4) The possession of the receiver is simply the possession of the Court. To such an extent is this the case that any attempt to disturb that possession without the leave of the Court, is a contempt of Court. The receiver has no personal rights in the property, and he cannot take any steps even for the purpose of defending his possession without the sanction of the Court. Also as a rule so little personal interest of any kind has he in the matter that he is not justified himself in making any application whatever to the Court. If it is necessary that he should take action of any sort it is for the parties to the suit or one of them, to come to the Court to put him in motion; and whatever the receiver rightly does, with regard to the property he does it simply in the character of agent for the owners of the property or the persons interested in it and with certain exceptions in no sense as principal.(5)

(1) *Zohra v. Zobeda*, 12 C. L. J. 368; *Eastern Mortgage Co. v. Muhamad*, 52 C. 914: 1926 C. 385.

(2) *Kuppuswamy v. Suppan*, 30 M. 505, [*Jagadish v. Debendra*, 58 C. 850: 35 C. W. N. 161 (notice under s. 80 of C. P. C. mandatory). Cf. (1956) 1 C. 171, 44 C. W. N. 74, 52 C. W. N. 960, 1940 P. 516, 1952

A. 402, 1938 N. 449. See p. 293].

(3) *Evans v. Coventry*, 3 Drew, 80.

(4) *Harihar v. Harendra*, 37 C. 754. [See also *Ganpat v. Prahlad*, 1952 N. 253 (s. 247, Succession Act)].

(5) *Wilkinson v. Gungadthur*, 6 B. L. R. 486 at pp. 487, 488.



Although ordinarily a receiver does not himself apply for commencing proceedings for contempt and although, generally speaking, the action is taken by the parties beneficially interested in the properties there is nothing to prohibit his doing so. Receivers have on occasions taken action themselves without the parties coming forward in the matter.(1) A receiver has no proprietary rights or interest whatever. Notwithstanding his appointment the proprietary rights in the estate remain in the persons who are by law entitled to the estate.(2) The receiver's possession is not a possession by any personal right. It is the possession of the Court and he is totally devoid of any interest in the property.(3) He is in the position of a stake-holder who has custody of the property for the benefit of the true owner.(4)

The general objects sought by the appointment of a receiver may be described to be to provide for the safety of property pending(5) a litigation and until the hearing of the cause or during the minority of infants; to preserve property in danger of being dissipated or destroyed by those to whose care it is by law entrusted or by persons having immediate but partial interests therein.(6) A receiver duly appointed is from the moment of his appointment to be considered as an officer of the Court itself. He will be protected by it in the proper discharge of the necessary duties of his office; the possession of the receiver not being permitted to be disturbed without the special leave of the Court,(7) and it will be treated as a contempt of the Court if any such interference takes place;(8) the reason being, as explained by Lord Eldon,(9) that his possession is the possession of the Court,(10)

(1) *Grey v. Woogra*, 28 C. 790, 793. See, however, *Rabeholme v. Smith*, 34 C. 336.

(2) *Ram Lochun v. Hogg*, 10 W. R. 430, 431.

(3) *Wilkinson v. Gungadhur*, 6 B. L. R. 486, 493, 494.

(4) *Dwijendra v. Jogesh*, 39 C. L. J. 40. [See (1), p. 1].

(5) *Tullet v. Armstrong*, 1 Keen, 428; *Owen v. Homan*, 4 H. L. 1032; *Narain v. Kesabati*, 18 C. W. N. 537; 25 I. C. 406.

(6) *Bennet*, 2; *Benoy v. Satish*, 54 I. A. 131; 32 C. W. N. 681.

(7) *Brooks v. Greathead*, 1 J. &

W. 178; *Angel v. Smith*, 9 Ves. 335.

(8) *Broad v. Wickham*, 4 Sim. 511; *Johnes v. Claughton*, Jac. 573; *Doulat v. Rameswari* 26 C. 625, 629; *Kilachand v. Ajodhya*, 59 B.10: 1934 B. 452; 154 I. C. 162.

(9) *Angel v. Smith*, supra: in this case the rule was spoken of as applicable to sequestrators which rule equally applies to receivers.

(10) So where a receiver is appointed to receive rents and profits of immovable property the tenants in possession become virtually *pro hoc vice* tenants of the Court, their landlord: *Orr v.*



and the Court being competent to examine the title will not permit itself to be made a suitor in a Court of law ; but will itself examine the title, the mode being by permitting the party to come in to be examined *pro interesse suo* [i.e., for his own interest].(1)

The receiver's functions are to obey the orders of the Court, collect and account for the rents, and manage the estate ; and the Court will see that this is done and protect the agent appointed under its orders.(2) A receiver may be appointed of any property, movable or immovable.(3) Receivers might also under the former Code be appointed of the property of insolvents, in which case the appointment was for the benefit of the whole body of creditors ;(4) and when a Magistrate attaches, under s. 146 of the Criminal Procedure Code, the subject of dispute, he may, if he thinks fit, appoint a receiver thereof, who, subject to the control of the Magistrate, has all the powers of a receiver appointed under the Code of Civil Procedure.(5) The rules relating to such appointments formed and form part of the insolvency and criminal law respectively, and are not dealt with in the following pages which relate to the appointment of receivers in civil actions only. Further, insolvency in the mofussil is now regulated by the Provincial Insolvency Act of 1920. Where a receiver is required for the purpose not only of receiving rents and profits or of getting in outstanding property, but of carrying on or superintending a trade or business he is usually called a manager or a receiver and manager,(6) though the terms are synonymous.(7) The appointment of a manager implies that he has powers to deal with the

*Muthia*, 17 M. 501, 503. See also *Doulat v. Rameswari*, 26 C. 625 : 629. The Court is not concerned with any claims of, or rights which may have accrued to, any third party by reason of any assignment or transfer during the pendency of the suit.

(1) As to the practice with regard to an examination *pro interesse suo*, see 1 J. & W. 179 ; *Prahlad v. Tikaitri* 1956 P. 233 ; *Chirutha v. Chandu*, 1958 Ker. L. J. 302 ; See also pp. 72, 73.

(2) *Dinonauth v. Hogg*, 2 Hay, 395, 397 (1863) ; *Buck v. Colbath*, 70

U. S. 334.

(3) C. P. Code, 1908, O. XL, r. 1.

(4) Act XIV of 1882, s. 351 ; *Badal v. Birch*, 15 C. 762, 764. He was entitled to a lien for the amount of his commission on the net assets remaining after payment of the charges specified in the former s. 356 (b), (c), (d), repealed by Provincial Insolvency Act, 1907 [itself repealed by Act V of 1920]. *Mahadeva v. Kuppu*, 15 M. 233.

(5) Cr. P. Code, s. 146 (2).

(6) Kerr, 281 ; [*Ramswami v. Ayyalu*, 1924 M. 614 : 78 I.C. 625].

(7) *Orr v. Muthia*, 17 M. 501, 504.



property over which he is appointed manager and to appropriate the proceeds in a proper manner. He is bound to carry on in accordance with the general course of business adopted by the particular trade, and is the servant and officer of the Court and must, upon any question arising as to the character or details of the management, be directed by the Court which, on appointing a manager of a business or undertaking, in effect, assumes the management into its own hands. Managers are responsible to the Court which appoints them, and no orders of any of the parties interested in the business over which they are appointed managers can interfere with this responsibility. The Court will in no case assume the management of a business or undertaking except with a view to the winding-up and sale of the business or undertaking. The management is an *interim* management; its necessity and its justification spring out of the jurisdiction to liquidate and sell; the business or undertaking is managed and continued in order that it may be sold as a going concern and with the sale the management ends. A manager may be appointed to carry on a private trade or business so as to wind it up for the benefit of the parties interested.(1) The Court, if it can appoint a receiver, has ample power to provide for the management of the property and can deal with property which is under its control just as completely as the owner of the property can deal with it.(2) In cases where the manager of the estate must necessarily reside in the country where the estate is situated it is usual in English practice to add to the order directing the appointment of a manager, an order for the appointment of one or more consignees (who are the paid agents of the Court to manage the estate which is in the hands of the Court) resident in England to whom the produce of the property in question may be remitted and by whom it may

---

(1) Kerr, 281; [*Truman v. Redgrave*, 18 Ch. D. 547]; in *Short v. Pickering*, 6 M. 138 in which the Court directed a receiver to manage the business of a milliner's shop attached in execution of decrees, it was held that the servant of a firm, the business of which is being managed by a receiver appointed under s. 503 of the Civil Procedure

Code, has no preferential claim over the attaching creditor on the assets of the firm for wages due before the appointment of the receiver; in *Orr v. Muthia*, 17 M. 501 a receiver of attached property was appointed to superintend the harvest and to recover the *melva-ram*

(2) *Poresh v. Omerto*, 17 C. 614.



be disposed of.(1) [The position of a common manager under the Bengal Tenancy Act is analogous to that of a receiver.(1a)]

The possession of the receiver is on behalf and for the benefit of all the parties to the suit in which he is appointed.(2) His possession is the possession of all the parties to the proceeding according to their titles. The property in his hands is in *custodia legis* for the person who can make a title to it. It does not follow that because wide powers are conferred upon receivers including a power to remove the property in possession, his relation either to the Court or to all the parties interested in the proceeding undergoes any change in proportion to the extent of his powers.(3) The appointment, though it may operate to change possession, has no effect itself upon title to the property in any way and determines no right as between the parties.(4) Although a receiver is an officer to hold property for the benefit of the party ultimately entitled to it, yet when such party is ascertained, the receiver is considered as his receiver.(5) The possession of a receiver appointed by the Court during the pendency of a suit should be regarded as possession for the party who might ultimately turn out to be the true owner and entitled to possession as such. The effect of such possession by the receiver is to destroy the adverse possession, if any, of either of the parties.(6) The receiver is ordinarily not the representative or agent of either party to a suit in the administration of the trust but the appointment is for the benefit of all parties and

(1) Kerr, 307; as to the position and lien of consignees, see *Moran v. Mittu*, 2 C. 58; *Eastern Mortgage Co. v. Muhamad*, 52 C. 914.

[(1a) *Beni Madhab v. Deb Narayan*, 24 C. W. N. 138 : 141; *Gauri Shankar v. Sankar*, 61 C. W. N. 489.]

(2) *Kartick v. Padmanund*, 11 C. 496, 498; *Orr v. Muthia*, 17 M. 501, 503; *Eastern Mortgage Co. v. Muhamad*, supra. 1960 Ker. 212.

(3) *Orr v. Muthia*, 17 M. 501 : 503; *Eastern Mortgage Co. v. Muhamad*, supra.

(4) Beach, s. 1; *Orr v. Muthia*, 17 M. 501 : 504; *Eastern Mortgage Co. v. Muhamad*, supra. 45 C. W. N. 68.

(5) *Orr v. Muthia*, 17 M. 503, This principle is applicable in the

case of a suit in which title to property is decreed and not to attached property, the title to which continues to vest in the judgment-debtor. See also *Appasami v. Jotha*, 22 M. 448, 451; Kerr. 179 but see Beach, s. 223; High, s. 135; the person who has the title to the property must be deemed to be in possession: *Tribhuwan v. Sri Narain*, 20 A. 341, 344.

(6) *Sarola v. Sarada*, 2 C. L. J. 602; 610 : 611. [See *Brojendra v. Bharat*, 20 C. W. N. 481 (attachment under s. 146 of Cr. P. C.), *Subbaiya v. Mustafa*, 32 M. L. J. 85, *P. Lakshmi v. L. Lakshmi*, 1957 S. C. 314].



he holds the property for the benefit of those ultimately found to be the rightful owners.(1) He is not appointed for the benefit of strangers to the suit; but is not to be regarded in any sense as the agent or representative of either party to the action,(2) though the ordinary law of principal and agent applies to this extent that what the receiver rightly does, he does in the character of agent for the owner (whoever he be) of the property, and this is so even in the case of parties who opposed his appointment or objected to his receiving particular powers.(3) It was held under the Code of 1859 which contained less extensive provisions than those of the last or present Code that his duties as officer of the Court were confined in the case of property the subject of attachment to realising, preserving and managing the property for the collection of the moneys and money-profits due to the debtor.(4) Where, however, the receiver of attached property acts in the exercise of powers conferred upon him by the Court, it is erroneous to regard him as the judgment-creditor's agent because on his application the appointment is made. The appointment is the act of the Court and once made he is an officer of the Court and subject to its orders.(5) A receiver is frequently spoken of as the "hand of the Court" and the expression very aptly designates his functions as well as the relation which he sustains to the Court. The assets and property in his hands are as much in the custody of the law as if levied upon under an execution or attachment, it being held that the appointment of a receiver is in effect an equitable execution by means of which the Court makes a general appropriation thereof leaving the question

(1) *Harihar v. Harendra*, 37 C. 754; 12 C. L. J. 252; *Harihar v. Jahar*, 26 C. W. N. 992.

(2) Beach, s. 2: he exercises his functions in the interest of neither plaintiff nor defendant, but for the common benefit of all parties in interest; High, s. 1; on whose behalf he is appointed, *Prem Lall v. Sumbhoo*, 22 C. 960, 973 [follows *Bertrand v. Davies*, 31 Beav. 429].

(3) *Poresh v. Omerto*, 17 C. 614: 616; [judgment of Trevelyan, J.] referring to *Wilkinson v. Gungadhar*, 8 B. L. R. 486, as the leading

case in this country on the position of a receiver. The appointment ordinarily gives no advantage or priority to the person at whose instance the appointment is made, over other parties in interest. High, s. 5.

(4) *Tiel v. Abdool Hye*, 19 W. R. 37; distinguished in *Orr v. Muthia*, 17 M. 501: 502: 503. See *post* "Receivers of attached property."

(5) *Orr v. Muthia*, 17 M. 501, 503; *Rahimuddin v. Fastuddin*, 9 Dac. L. R. 23.



of who may finally be entitled to be determined thereafter.(1) When a party is declared entitled to the property by the decree in a suit, the Court has no option but to give that party possession of it. The Court having been in possession of the property on behalf of the parties to the suit is bound to give possession to the successful party in that suit. Anyone else entering into possession would be a trespasser.(2) The receiver has no estate or interest himself, and his power to manage is created simply by the order of the Court appointing him and is binding only upon the persons before the Court.(3) His powers at best are no more than those which the parties to the suit turn out to be possessed of when the case is finally decided ; but if he takes possession of property under colour of his appointment, his conduct cannot be disputed by a motion to discharge or get rid of the attachment.(4) As the servant of the Court and not of the parties he has only such power as the Court may choose to give him, and it is a contempt for any of the parties to enter into an agreement with him restricting and controlling his powers.(5) [The position of an administrator *pendente lite* is almost similar to that of a receiver.(5a)]

§ 2. The issue of injunctions, whether temporary or perpetual, is a form of "specific relief." So also is the appointment of a receiver pending a suit.(6) The Code(7) further provides for the appointment of a receiver of property under attachment(8) and the former Code also in the case of insolvent debtors.(9) But it has been said that in the former case the appointment of a receiver is "rather a matter of ministerial procedure than of specific relief" ;

Appointment of receiver is a form of specific relief.

(1) High, ss. 2, 5. See *Administrator-General v. Premalal*, 22 I. A. 203 ; 22 C. 1011, 1015, 1016.

(2) *Doulat v. Rameswari*, 26 C. 625, 629, 630 : 3 C. W. N. 461.

(3) *Nilmadhub v. Gallanders*, 2 Sev. 951 (1863) ; *Eastern Mortgage Co. v. Muhamad*, 52 C. 914 : 41 C. L. J. 571 : 1926 C. 385.

(4) *Bissessuree v. Sookram*, 15 W. R. 347 ; *Tiel v. Abdool Hye*, 19 W. R. 37 ; as to the first case *v. post*. In *Ram Chandra v. Keshobati*, 36

C. 840 P. C. ; held that there was nothing to show that the receiver had any greater power than the plaintiffs themselves had.

(5) *Manick v. Surrut*, 22 C. 648, 656.

[(5a) *Meerza Kuratul v. Broughton*, 1 C. W. N. 336, 338].

(6) Act I of 1877, s. 5.

(7) C. P. Code, 1908, O XL, r. 1.

(8) See *post*, Ch. IV.

(9) Act XIV of 1882, Ch. XX. now repealed.



and, in the latter case, the receiver is the agent of the creditors,(1) and both cases must be distinguished from a receiver appointed by way of specific relief pending a suit.(2) A receiver under the Code merely holds the estate on behalf of the Court. It does not vest in him nor does he represent it. A receiver under the Insolvency Act is more than a mere officer of Court. The insolvent's estate vests in him alone and no one else represents the estate.(3)

Relief by specific performance, injunction and receiver belong to the same branch of the law. Moreover, the appointment of a receiver operates as an injunction against the parties, their agents and persons claiming under them, restraining them from interfering with the possession of the receiver except by permission of the Court;(4) and "an order for an injunction is always more or less included in an order for a receiver. It is not necessary, if a receiver be appointed, to go on and grant an injunction in terms."(5) All the three forms of relief are dealt with by the Specific Relief Act. The issue of temporary injunctions and the appointment of receivers were, together with the subjects of arrest and attachment before judgment and interlocutory orders, dealt with by the last Code under the single heading of "Provisional Remedies."(6) Relief granted by appointment of a receiver *pendente lite* bears in many respects a close analogy to that by temporary injunction. Both are extraordinary equitable remedies as distinguished from the ordinary modes of administering relief. Both are essentially preventive in their nature being properly used only for the prevention of future injury, rather than for the redress of past grievances. Both have one common object in so far as they seek to preserve the *res* or subject-matter of the litigation unimpaired, to be disposed of in accordance with the future decree or order of the Court.(7) There is, however, a distinction between the remedies in that "specific performance is directed to compelling performance of an active duty, while injunction (though sometimes in a subsidiary

(1) See *Ex parte Warren*. In re *Joyce*, L. R., 10 Ch. Ap., 222; *Badal v. Birch*, 15 C. 762, 764.

(2) Collet's Law of Specific Relief in India (1882), p. 236; [Banerji's Specific Relief, p. 684].

(3) *Mahrana v. David*, 46A, 16; *Manmatha v. Saroj*, 1936 C. 639.

(4) *Zohur v. Noor*, 21 C. 85, 91 [Tyrrell v. Painton, (1895) 1 Q. B. 206].

(5) Kerr, 10.

(6) Act XIV of 1882, Part VI.

(7) High, Receivers, ss. 16, 17. See *D. K. Raja v. P. S. Kumarswamy* 1955 M. 360.



way requiring an act to be done) is generally directed to preventing the violation of a negative one. The difference, however, is very great. The remedy of specific performance, relating as it does to active duties, deals in the main only with contracts ;(1) while the remedy of injunction, having to do with negative duties, deals not only with contracts, but also with torts, and with many other subjects, among them subjects of a purely equitable nature.”(2)

Whether, however, the negative duty, or duty to abstain be contractual or general, the injunction which enforces it is the same in nature and form. The general grounds of similarity between relief by receiver and by injunction have been adverted to. Perhaps the principal element of difference between these two important remedies lies in this : that an injunction is strictly a conservative remedy, merely restraining action and preserving matters *in statu quo*, without affecting the possession of the property or fund in controversy ; while the appointment of a receiver is usually a more active remedy since it changes the possession as well as the subsequent control and management of the property. The Court by an injunction ties up the hands of the defendants and preserves unchanged, not only the property itself, but the relations of all parties thereto. But in appointing a receiver the Court goes still farther, since it wrests the possession from the defendant and assumes and maintains the entire management of the property or fund, frequently changing its form, and retaining possession through its officer, the receiver, until the rights of all parties in interest are satisfactorily determined.

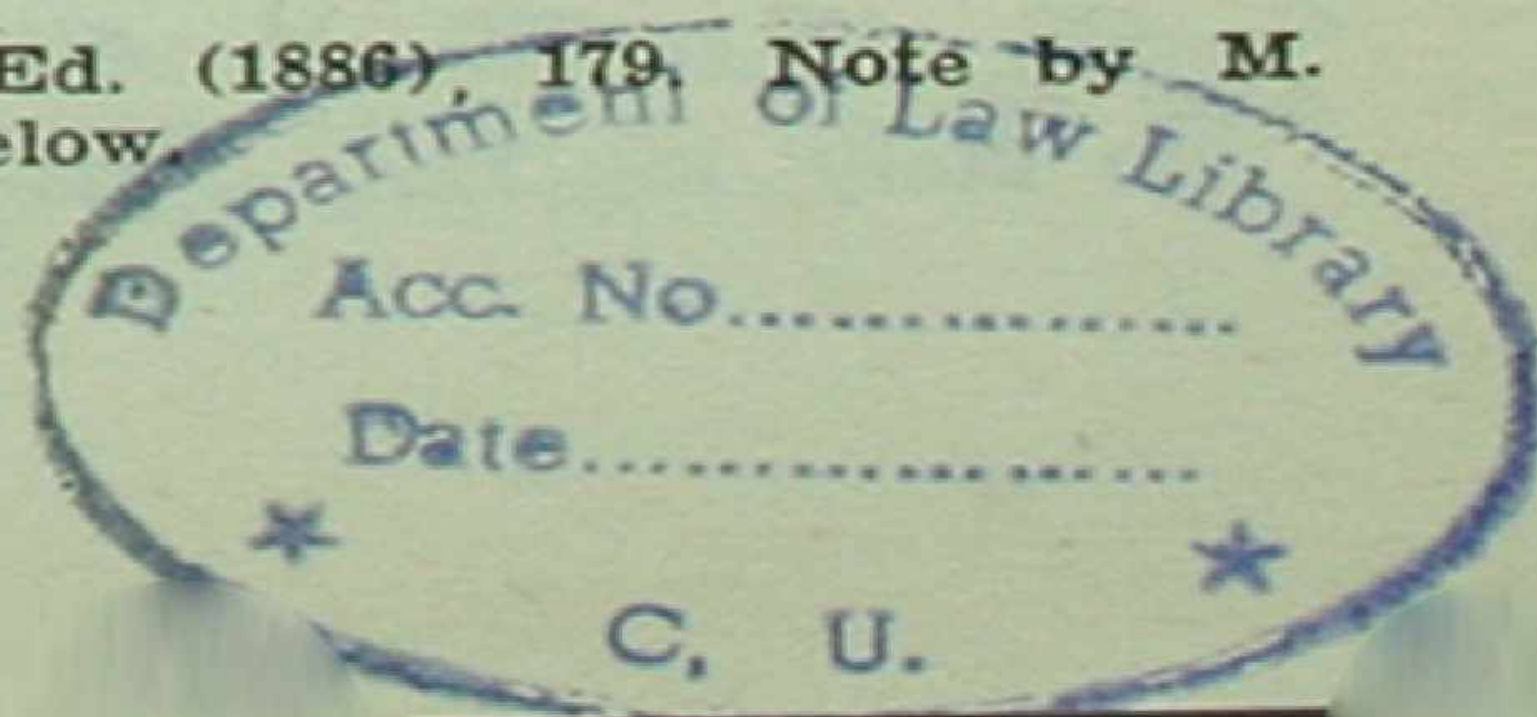
From the points of resemblance already indicated it is not to be inferred that the appointment of a receiver necessarily follows from the granting of an injunction or that the two remedies are necessarily inseparable. And while it frequently happens that the Courts are called upon to administer both species of relief in the same action, and at one and the same time, yet it by no means follows that because an injunction is granted a receiver must be appointed and the two are to be treated as distinct and independent matters. The Court therefore may refuse a receiver, although

(1) Smith's Principles of Equity, 688.

(2) *Ib.*; Story, Eq. Jur., 13th

Amer. Ed. (1886), 179. Note by M. M. Bigelow.

42873





the case presented is a fitting one for an injunction and although an injunction has already been granted.(1) A distinction exists between the case in which an injunction and that in which a receiver will be issued or appointed respectively. "That distinction seems to be that, while in either case it must be shown that the property should be preserved from waste or alienation ; in the former case it would be sufficient, if it be shown that the plaintiff in the suit has a fair question to raise as to the existence of the right alleged ; while in the latter case, a good *prima facie* title has to be made out."(2)

Relief whether it be given by the issue of an injunction or the appointment of a receiver is granted generally upon the principle *quia timet* ; that is, the Court assists the party who seeks its aid, because he fears (*quia timet*) some future probable injury to his rights or interests, and not because an injury has already occurred, which requires any compensation or other relief. So the remedy by temporary injunction being preventive in its nature, it is not necessary that a wrong should have been actually committed before the Court will interfere, since, if this were required, it would in most cases defeat the very purpose for which the relief is sought by allowing the commission of the act which the complainant seeks to restrain. A satisfactory proof that the defendants threaten the commission of a wrong (which is within their power) is sufficient ground to justify the relief.(3) These and other similar precautionary reliefs were formerly granted by Courts of Equity and Bills *quia timet*,(4) to support which it must have been shown, *firstly*, that there was a title in possession or expectancy in the plaintiff, and *secondly*, that there was danger to the property.(5) These bills would now take the form of an action in the nature of a Bill *quia timet* and would be brought, in England, in the Chancery Division, and in India,(6) in any Court

(1) High, ss. 17, 18, and see *Hall v. Hall*, 3 MacG., 85, where it was said that "the rights to those different remedies are essentially distinct and depend upon totally different ground and circumstances."

(2) *Chandidat v. Padmanand*, 22 C. 459, 465 ; 1955 M. 571 ; 1952 Ajm. 62.

(3) Story, Eq. Jur., s. 826 : High,

Inj., ss. 17—23 ; [*Raghunath v. Budaun Electric Co.*, 1949 A. 112. See *Mallappa v. Paldar*, (1951) Mys. 55 F. B. (though no waste as in O. 39 specifically alleged)].

(4) Story, Eq. Jur., ss. 825—851.

(5) *Satoor v. Satoor*, 2 Mad. H. C. R. 8, 10 (1864).

(6) *Ib.*, 10, where it was pointed out that the plaint was really in the nature of a Bill *quia timet*,



of Jurisdiction competent to grant the relief prayed. "The remedy of (final) injunction, like that of specific performance, proceeds upon the theory that there are duties, the performance of which, as they stand, ought to be insisted upon,—duties in regard to which an election, as an equivalent, to violate the same upon the terms of making compensation cannot be permitted; not indeed that all the duties, the violation of which may be enjoined, may be enjoined without regard to the question whether damages for a violation could be accurately computed, but that there *are* duties of a peremptory nature within the operation of the remedy of injunction as well as within that of specific performance. These duties may here, as well as in the law of specific performance, be termed primary, since they are not substitutional.(1) The manner in which the above-mentioned aid is given by Courts of Equity is, of course, dependent on circumstances. They interfere sometimes by the mere issuing of an injunction or other remedial process.(2) But that portion of equitable jurisdiction which consists in the administration of a protective or preventive justice is not limited to this. The Courts interfere also by orders to pay funds into Court,(3) by directions to give security, by orders for the detention and preservation of property, by other like orders and directions,(4) and by the appointment of a receiver to receive rents or other income,(5) thus adapting their relief to the precise nature of the particular case and the remedial justice required by it; the object being in all cases to preserve property to its appropriate uses and ends.(6)

§ 3. The law relating to the appointment of receivers in civil suits,1) in [India, Pakistan and Burma](8)

Law  
relating to  
Receivers.

but that it did not disclose any of the grounds necessary to support such a bill.

(1) Story, Eq. Jur., 13th Amer. Ed., 1886, pp. 178, 177. Note by M. M. Bigelow.

(2) v. *Supra*.

(3) See *Satoor v. Satoor*, 2 Mad. H. C. R. 8, 11 (1864).

(4) See Author's Law of Injunctions, 5th Edition, p. 16.

(5) Civ. Pr. Code, 1908, O. XL; Act I of 1877, s. 44.

(6) Story, Eq. Jur., s. 826; Smith's Principles of Equity, s. 752.

(7) The Criminal Procedure Code in ss. 88, 146 (2) deals with the appointment of receivers of attached property. Specific relief by the appointment of a receiver cannot be granted for the mere purpose of enforcing a penal law, Act I of 1877, s. 7.

(8) Substituted for 'British India', For definition of these words, see Act X of 1897, s. 3 (7).



is contained in the Civil Procedure Code(1) and Specific Relief Act(2) which merely declares that the appointment of a receiver pending a suit rests in the discretion of the Court and refers to the Code of Civil Procedure for the mode and effect of their appointment, and for their rights, powers, duties and liabilities. Both the earliest Codes (Acts VIII of 1859 and X of 1877) dealt with the subject.(3)

Act X of 1877, however, contained provisions of a more complete character, and which were in fact with some minor alterations in the sections relating to receivers, the same as those of the last Code. Section 92 of Act VIII of 1859 enabled the Courts to appoint a receiver or manager in all cases in which it might appear to the Court to be necessary for the preservation or the better management or custody of any property "which is in dispute in a suit," and section 243 enabled the Court to appoint a manager to realize debts or rents and receipts of landed property where the debts or land were attached in execution of decrees. Chapter XXXVI of the Code of 1877 which, with some minor alterations,(4) was identical with the same chapter of the last Code supplied the place of both of these provisions, and going further gave the Court very general powers as to the appointment of receivers.(5)

(1) O. XL, rr. 1, 5. Ss. 1, 155-158 of the Code extend to the whole of British India; the other sections to the whole of British India except the Scheduled Districts as defined in Act XIV of 1874. The Code has been extended to certain of these districts. See the Author's Law of Injunctions.

(2) Act I of 1877, s. 44, which extends to the whole of British India except the Scheduled Districts to some of which, however, it has been extended. See Author's Law of Injunctions.

(3) See Act, VIII of 1859, ss. 92, 94, 243; Act X of 1877, ss. 503-505.

(4) In s. 503, cl. (d) the words *as the Court thinks fit* were inserted after the word *remuneration* by Act VII of 1888, s. 42. In s. 504, Act X of 1877, the opening words of the section were *"if*

*the property be*" instead of *"where the property is."* In the same section Act VII of 1888, s. 43, substituted the words *"the Court may with the consent of the Collector appoint him"* for the words *"the Court may appoint the Collector"* in Act X of 1877, so as to render the Collector's consent necessary to his appointment as receiver.

(5) Ss. 503-505 of Act X of 1877 are, except as to the points mentioned in the last note, identical with the same sections of the last Code. As to s. 504, see Act VIII of 1859, s. 92. S. 505 was first inserted in the Code by Act X of 1877. A Mofussil Court of Small Causes could not appoint a receiver under the Code of 1877 as Ch. XXXVI was not extended to those Courts, but it was held to be otherwise under the previous Code; *Nursingdas v. Tulsiram*, 2 B. 558.



Further orders made under s. 92 of Act VIII of 1859 were appealable only at the instance of the defendant,(1) but orders made under s. 503 of the last but one(2) or last(3) or present(4) Code were and are appealable at the instances of either party. Prior to the establishment of the High Courts, the Supreme Courts of the Presidencies appointed receivers following the principles and practice of the Court of Chancery in England.(5) The amendments effected by the present Code (Act V of 1908) are as follows :—Chapter XXXVI of the Code of 1882 dealing with receivers contained three sections 503, 504, 505. Section 503 has (subject to the amendments italicised in the Appendix) been incorporated in O. XL, rr. 1—3. Of these r. 1 corresponds with the first half and the last paragraph of s. 503 ; r. 2 corresponds with the first portion of clause (d) of s. 503, the rest of that clause being retained in r. 1. Rule 3 is the second half of s. 503 less the last paragraph which has been put in r. 1. Rule 4 introduces new provisions for the enforcement of receiver's duties which are drafted on the lines of s. 18(4) of the Provincial Insolvency Act, 1907. Rule 5 is s. 504 of the last Code. Section 505 has been omitted. This is the most important change effected as the former restriction of powers of appointment of receivers to the High Courts and District Courts has been removed. Other amendments of former provision appear to be of a verbal character, and except where specially noted in the text the law is now the same as it was previously under the former Code. Under O. XL, r. 1 of the Civil Procedure Code, the Court has been given precisely the same discretion in questions of appointment of a receiver that the Courts in England have. The condition in the Old Code that to justify such appointment in any case it should be found necessary to

(1) Act VIII of 1859, s. 94.

(2) Act X of 1877, s. 588 (e).

(3) Act XIV of 1882, s. 588 (24).

(4) O. XLIII of Act V of 1908.

(5) See *Kistonundo v. Prawnkissen* (1829), Clark's Rules and Orders, 1829. Notes of decided cases, 52. In the Charter establishing the Supreme Court of Judicature, 26th March 1774, cl. 18, given in Vol. I of Smoult and Ryan's Rules and Orders, it is ordained that the Supreme Court be a Court of Equity with full

power and authority to administer justice as nearly as may be according to the rules and proceedings of the Court of Chancery. As to the High Courts, see High Courts Act, 1861, and Letters Patent. As to the former powers of District Courts to appoint receivers, see *John Tiel v. Abdool Hye*, 19 W. R. 37, 39 (1872); *Joynarain v. Shibpersad*, 6 W. R. Misc., 1 (1866); (jurisdiction of Sudder Ameen). As to Mofussil Small Cause Courts v. *ante*.



preserve property from waste and alienation having been removed there has been a substantial widening of the Court's discretion. (1)

§ 4. The jurisdiction of the Civil Courts in this country to grant relief by injunction or receiver is determined by the Civil Procedure Code and Specific Relief Act. **Jurisdiction to appoint Receivers.** Certain common conditions are necessary to the existence of jurisdiction to grant either of these forms of specific relief which conditions will be found fully dealt with in the Author's Law of Injunctions. More shortly stated these conditions are as follows :—

(1) In the first place, specific relief whether given by the issue of an injunction or the appointment of receiver cannot be granted for the mere purpose of enforcing a penal law, (2) that is, such enforcement must not be the *sole* object of requiring specific relief, but the real object must be the protection of some civil right or the prevention of a tort or civil wrong. Though, however, the Court cannot interfere for the purpose of giving a better remedy in the case of a criminal offence yet if an act which is criminal touches also the enjoyment of property the Court has jurisdiction. (3) So the fact that an act complained of amounts to the criminal offence of misappropriation rather than to simple waste is no ground for refusing relief by way of appointment of a receiver. (4)

(2) Secondly, assuming the matter to be of a civil nature, it is ordinarily a necessary condition to the grant of either form of relief that there should be a suit pending in which either of these reliefs may be granted. (5) Under the last Code, however, a receiver might have been appointed not merely of property the "*subject of a suit*", but also of property "*under attachment*." This is almost so now under the present Code which

(1) *Ramji Ram v. Saligram*, 14 C. W. N. 248 : 14 C. L. J. 215. Also 14 C. W. N. 252, (1951) Mys. 55 F. B.

(2) Act I of 1877, s. 7.

(3) See Author's Law of Injunctions, 5th Edition, p. 36.

(4) *Hanumayya v. Venkatasub-bayya*, 18 M. 23.

(5) A Court has no jurisdiction to appoint a receiver unless a cause be depending. Ex parte *Whitfield*, Bennet 3; Author's Law of Injunctions; *Chandreswar v. Biseswar*, 5 P. L. J. 513. But see 1945 A. 261 F. B.



speaks of "any property." The suit must be pending in the Court from which either of these reliefs is sought. Thus a District Court has no jurisdiction to appoint a receiver or manager in respect of property in dispute in a suit pending in a Subordinate Court ;(1) and where a Court has thus no jurisdiction to make an order it can have no jurisdiction to modify such order.(2) The Code gives power only to the Court in which the suit is brought or by which the property has been attached. A Court cannot appoint a receiver except it has seisin of the property either by a suit being pending or by proceedings in execution of decree made in a suit being pending and attachment having been made. It is only the Court in which a proceeding is pending and which has thereby the property under its control that can appoint a receiver. Under the last Code it was only where the procedure contained in s. 505 had been adopted that a District Court could appoint a receiver in suits pending before or attachments made by subordinate Courts.(3) Now Subordinate Courts may themselves appoint directly. [Higher Courts may appoint in appeal or revision].

(3). Thirdly, not only must the matter be of a civil, as opposed to a criminal nature, and subject to what is above stated, a suit be pending, but such suit must disclose a cause of action, and the Court must have general jurisdiction to entertain it. If it has not such jurisdiction it will plainly have no power to grant relief. The Court must not be barred by the Code or any other enactment from taking cognisance of the suit which must further be not only of a civil nature generally, but within the meaning of that Code.(4)

(4) Lastly, the Court to which application for the relief prayed for is made, must be one which, assuming all the preceding conditions to have been fulfilled, has otherwise jurisdiction to try the suit in which that relief is sought. With regard to this the extensive power of the Court of Chancery to act *in personam* must be considered with reference to the limitation on jurisdic-

(1) *Dhundiram v. Chanda*, 2 Bom. H. C. R. 103, 2nd Ed., 98 (1865) ; *Latafut v. Anunt*, 23 C. 517.

(2) *Dhundiram v. Chanda*, *supra*.

(3) *Latafut v. Anunt*, 23 C. 517, 519, 520.

(4) See Author's Law of Injunctions, 5th edition, p. 38.



tion imposed by the Charters and by the Code of Civil Procedure. The Courts of this country have ordinarily no jurisdiction to try suits for immovable property where such property is situate without the local limits of their jurisdiction, and it would appear to be doubtful whether the equitable jurisdiction of the High Courts in India is of the same extent as that which has been claimed by the Court of Chancery, namely, to take cognisance of any equity between persons residing within the jurisdiction respecting lands outside it. But whatever may be the precise extent of the jurisdiction, the Civil Procedure Code has given to the Mofussil Courts the power to act *in personam* when the person against whom relief is sought resides within the jurisdiction. The Presidency High Courts under their Charters have a similar but in terms less restrictive jurisdiction.(1)

In the case of receivers it is not necessary in all cases in order to authorize the Court to make an appointment that the property in respect of which the receiver is to be appointed should be within the local limits of its jurisdiction.(2) In England it is not necessary in order to authorize the Court to appoint a receiver that the property in respect of which he is to be appointed should be in England or indeed in any of His Majesty's dominions. It is well settled that the Court can appoint receivers over property out of the jurisdiction, the power being based upon the doctrine that the Court acts *in personam*. Thus receivers have been appointed of property situate in Ireland, India, Canada, China, Australia. But the Court will not make the order if it would be useless and a man will not be appointed receiver unless he be within reach of the Court or has submitted himself to its jurisdiction. In such cases a receiver is appointed in England with power to appoint an agent abroad to collect the estate and remit the same to the receiver in England.(3) So in this country in a suit(4) brought by some

(1) See the subject fully discussed and cases cited in the Author's Law of Injunctions, §§ 19-22.

(2) *Juggodumba v. Puddomoney*, 15 B. L. R. 318, 324, 325, 330 (1875). [*Pramatha v. Low & Co.*, 57 C. 964 : 34 C. W. N. 238 ; *Bhugwandas v. Rivett*, 26 I. A. 32 : 23 B. 544 : 3 C. W. N. 186 ; 1953 C. 610 ; 1938 L. 93 ; 1921 M. 119. But see 1933 S. 231].

(3) Kerr, 126, 201. In re *Maudslay, Sons and Field*, 1 Ch. (1900), 602, 611. [*Penn v. Lord Baltimore*, 1 Ves. 444 : White & Tudor's Leading Cases (Specific performance decreed, of articles executed in England re lands in America)].

(4) *Juggodumba v. Puddomoney*, supra.



of the persons appointed trustees under a deed of endowment of certain land against their co-trustees, who were in possession, the plaintiff alleged that the defendant trustees had ousted the plaintiffs and had committed breaches of trust and prayed that the deed might be construed and given effect to and for a declaration that the plaintiffs were entitled to be *sebaits* jointly with the defendants, for the settlement of a scheme for the performance of the worship, for the appointment of a receiver, for an injunction to restrain the defendants from interfering with the property and for an account. By the deed the land was given to idols named therein, and the plaintiffs and defendants were appointed, subject to certain directions, *sebaits* and managers of the property, but were themselves to have no beneficial interest in the property.(1) The land, the subject of the deed, was situated out of Calcutta, but all the parties to the suit resided within the local limits of the High Court's jurisdiction;(2) it was held that, as the parties have no personal beneficial interest in the settled property, the suit was not one "for land" within the terms of the Charter, and that the Court had accordingly jurisdiction to entertain it, and to appoint, if necessary, a receiver of such property.(3) In respect of the objection that the Court had no power to appoint a receiver, it was said, "it has been the practice of the Court were it necessary to do so in order to enforce its own decree to appoint a receiver in respect of landed property situate in the Mofussil, and we feel ourselves justified in following that practice."(4) But in an earlier case where the whole cause of action did not arise in Calcutta, and only one defendant was personally subject to the jurisdiction and the immovable property was in Bombay, the Court was not prepared to say that it could appoint a receiver for the property which was within the jurisdic-

---

(1) See *Delhi and London Bank v. Wardle*, 1 C. 249, 261, per Pontifex, J.

(2) Where some of the parties opposing the appointment of a receiver were not subject to the jurisdiction, the Supreme Court stated that it "would always be careful for that reason to limit the appointment to the portion of the estate in the possession of those subject to the jurisdiction and

before the Court;" *Buddinath v. Bycantnath*, 2 Tay. & Bel., 192 (1851).

(3) *Juggodumba v. Puddomoney*, 15 B. L. R. 318, 324, 325, 330 (1875). See remarks on this case in *Jairam v. Atmaram*, 4 B. 482, 484, 485. [Appointment of receiver is not a proceeding strictly *in rem*: Clark on Receivers § 29].

(4) *Ib.*



tion of the Bombay Court, but was of opinion that whether it might or might not appoint a receiver of the property in Bombay it would certainly be a most inconvenient course to adopt.(1) In the undermentioned suits the Court held that it had power to appoint a receiver of properties outside the jurisdiction which had been partitioned by the Court in the suits in which the application for the appointment of a receiver was made.(2)

But in this country the power to make orders *in personam* though the subject-matter of the suit is without the jurisdiction, must be considered with reference to the limitation on jurisdiction imposed in the case of the High Courts by their respective Letters Patent(3) and in the case of Mofussil Courts by the Civil Procedure Code.(4) So where there is no jurisdiction to entertain a suit on the ground that it is one for immovable property situated without the local limits of the jurisdiction, the Court will have no power to grant provisional relief by way of the appointment of a receiver to take charge of the subject-matter of dispute in such suit.(5) Thus where a suit was brought which, amongst other reliefs, prayed that a receiver might be appointed to carry out certain trusts, it was *held* that though the plaint disclosed a good cause of action, as the Court, if it had jurisdiction, would have power to grant certain forms of relief prayed, including the appointment of a receiver of the estate, yet inasmuch as the suit was in substance one "for land" within the meaning of the Charter, the Court had no jurisdiction to try it. And accordingly all relief and of necessity, also, such appointment, was refused.(6) Even when land which was situate out of the local limits of the jurisdiction of the High Court, was already in the possession of a receiver

(1) *Hadjee v. Hadjee*, 13 B. L. R. 91, 99 (1874) : 21 W. R. 30.

(2) *Poresh v. Radha and Kamal Kumaree v. Poresh*, Cal. H. C. Suits 567 of 1874 and 307 of 1875. Cor. Sale, J., 13th July 1899, see this case cited in Chapter II, *post*.

(3) Letters Patent, 1865 (Calcutta) cl. 12.

(4) C. P. Code, ss. 16, 18. See

Author's Law of Injunctions, § 21.

(5) *Delhi and London Bank v. Wardie*, 1 C. 249, 257, explained in *Kellie v. Fraser*, 2 C. 445, 453, 457, 463, 465. See 1959 B. 275 (obiter), 1952 Ajm. 62.

(6) *Ib.* [As to 'suit for land' see *Galstaun v. Diana*, 33 C. W. N. 44; *Velliappa v. Govinda*, 52 M. 809 F. B.; contra. *Holkar v. Dadabhoy*, 14 B. 353].



appointed by the late Supreme Court(1) it was *held* that the High Court could not exercise jurisdiction in respect to such land in a suit which was held to be one "for land" within cl. 12 of the Letters Patent.(2) The test, therefore, of jurisdiction in all such cases is rather the nature of the claim made in respect of the property in suit than actual situation of such property. If the suit is not by reason of its substantial character and the provisions of the Code or Charters within the cognisance of the Court the latter is unable to grant relief. But where the relief sought is purely *in personam* and not *in rem* the Courts are empowered to make a decree which shall be of the same character.

The Presidency High Courts possess the same powers with regard to the appointment of a receiver as are possessed and exercised by the Courts in England under the Judicature Act of 1873, and the practice in respect of these matters should be the same.(3) But while under the last Code all Civil Courts, with certain exceptions had jurisdiction to issue injunctions, on the other hand, the powers conferred by that Code in respect of the appointment of receivers could be exercised by the High Courts and District Courts only ; provided that whenever the Judge of a Court subordinate to a District Court(4) considered it expedient that a receiver should be appointed in any suit before him, he was to nominate such person as he considered fit for such appointment and submit such person's name, with the grounds for the nomination to the District Court, and the District Court then authorized such Judge to appoint the person so nominated, or passed such other order as it thought fit.(5) This is, however, not so now. The Subordinate Judge may himself directly appoint a receiver.

---

(1) The jurisdiction of the Supreme Court was not limited in the manner that the jurisdiction of the High Courts is limited. It had the power of dealing with land out of Calcutta. See Author's Law of Injunctions.

(2) *Denonath v. Hogg*, 1 Hyde 141 (1862-1863).

(3) *Jaikisondas v. Zenabat*, 14 B. 431, 434.

(4) As to the meaning of "District Court" see s. 2, Civ. Pr. Code.

(5) Act XIV of 1882, s. 505. S. 503 of that Code extended to the Presidency Small Cause Courts Act (XV of 1882), s. 23, Sched. II ; but see also the terms of s. 23 and ss. 503—505 applied to Provincial Courts of Small Causes Act (IX of 1887), s. 17 ; Civ. Pr. Code, Sched. II ; but see also the terms of s. 17, Act IX of 1887. It was otherwise under the Code of 1877. See *Nursingdas v. Tulsiaram*, 2 B. 558. The Code was held applicable to



In a suit under s. 92 of the Civil Procedure Code, the Court may supersede a trustee and appoint a receiver during the pendency of the suit notwithstanding that the trustee was appointed manager by the Temple Committee and was removable only after regular enquiry.(1) See also pp. 123, 288. [In a suit under the Religious Endowment Act no receiver can be appointed except under s. 5 thereof : 8 C. W. N. 404].

The jurisdiction to appoint a receiver may be exercised either by a Court of first instance or by a Court of Appeal.(2) In order to give the Court jurisdiction there must be a pending suit ;(3) and the Court cannot, in so far as its power to appoint a receiver extends only to the better management or custody of any property which is the subject of a suit, appoint, or continue the previous appointment of a receiver when the suit comes to an end by its dismissal ;(4) but when a suit is decreed, it was *held* that there was nothing in the last Code which limited the power of the Court to appoint a receiver after the decree, when this course was necessary or proper. So where in a suit by the widow of a deceased partner to wind up the partnership, on the application of the plaintiff after decree a receiver was appointed to collect outstanding debts for the purpose of executing the decree, it was objected that s. 503 referred only to the appointment of a receiver during the pendency of a suit, it was *held* that the appointment of a receiver after decree was valid.(5) (O. XL, r. 1 (a) now expressly provides that a receiver may be appointed whether before or after decree. As long as the order appointing a receiver remains unreversed, and as long as the suit remains a *lis pendens*, the functions of the receiver continue, until he is discharged by order of the Court.(6) Although the dismissal of a suit may operate as a discharge of the receiver appointed in it,(7) yet the Court has ample jurisdiction without the aid of a pending process, to require

---

suits under the Bengal Tenancy Act (VIII of 1885), v. *ib.*, ss. 143, 148, and as to the appointment of receivers in such suits, see *Kartic v. Padmanund*, 11 C. 496.

(1) *Kuppusumi v. Subramaniam*, 1923 M. 224 : 41 M. L. J. 545.

(2) *Jaikissondas v. Zenabai*, 14 B. 431. See also *Mohee v. Ahmed*, 14 W. R. 384, 385 (1870) ; *Suprasanna v. Upendra*, 18 C. W. N. 533.

In *Bajanmal v. Tyagaraja*, 1925 M. 1245 : 39 I. C. 943 the latter Court refused to appoint.

(3) v. *ante*, pp. 16-17.

(4) *Mohee v. Ahmed*, *supra*.

(5) *Shunmugan v. Moidin*, 8 M. 229, 233.

(6) *Dinonath v. Hogg*, 2 Hay. 395, 396 (1863).

(7) *Prem Lall v. Sumbhoo*, 22 C. 960, 973.



accounts from its own officer, to permit parties interested to intervene in the examination of these accounts, to make just allowances to its officer for the administration, and to deal with all questions of costs connected with the investigation of his accounts as between him and any parties interested, who may be allowed to appear and take part in it.(1)

The Court, if it can appoint a receiver, has ample powers to provide for the management of the property ; and can deal with property which is under its control just as completely as the owner of the property can deal with it.(1) The subject-matter of the appointment must have been under the last Code property, movable or immovable, which was "the subject of a suit," (3) or "under attachment," which latter words applied to property for the first time attached in execution of any decree. Where the property to be managed was not the subject of the suit no manager could be appointed before attachment.(4) A receiver may now under r. 1 of O. XL be appointed "of any property." (4a) Where, owing to the value of the subject-matter of a suit the Court has no power to try the same, any order made therein by way of appointment of a receiver is passed without jurisdiction.(5) The fact that the acts complained of, and which form the ground of an application for a receiver, amount to a criminal offence rather than to a civil wrong, will not deprive the Court of jurisdiction, if such acts affect a right to property.(6) Thus in a suit for the partition of the estate of a trading joint-family, which estate belonged to the plaintiff and his brother, the eldest surviving member of the family, it appeared that the latter had for some time past misappropriated large sums of money and had thrown the accounts into confusion. The plaintiff, therefore, applied to have a receiver appointed of the estate. The District Judge

(1) *Administrator-General v. Prem Lal*, 22 I. A. 208 : 22 C. 1011, 1015, 1016.

(2) *Poresh v. Omerto*, 17 C. 614, 615.

(3) Act XIV of 1882, s. 506. See *Sundaram v. Sankara*, 9 M. 334 ; *Jaynarain v. Shibpersad*, 6 W. R. Misc. 1 (1866) ; *Kartic v. Padmanund*, 11 C. 496 ; *Yeshwant v. Shankar*, 17 B. 388 ; *Poresh v.*

*Omerto*, 17 C. 614.

(4) *Bunwarree v. Girdharee*, 16 W. R. 273.

(4a) I.e., whether subject of suit or not : *Chettiar Firm v. U Sin*, 1935 R. 398 159 I C. 816.

(5) *Baidya Nath v. Makhan*, 17 C. 680

(6) *Hanumayya v. Venkatasub-bayya*, 18 M. 23.



dismissed the petition on the ground that no case had been established under s. 503 of the last Code ; that the acts complained of amounted to misappropriation rather than waste ; and that the petitioners could thereafter institute a criminal prosecution. It was *held* on appeal that these were clearly not sufficient reasons. The Code authorized the appointment of a receiver for the preservation or better custody of property, the subject of a suit. Whether property was wasted or misappropriated made no difference for the purpose of the Code. And it was pointed out that the future institution of a criminal prosecution would not enable a party to recover property that may have been misappropriated. The order of the District Judge was, therefore, set aside, and the case remanded for disposal according to law.(1) The fact that there exists in respect of any immovable property an order of a Magistrate passed under s. 145 of the Code of Criminal Procedure is no bar to the exercise by a Civil Court of the power conferred on it by s. 505 of the Civil Procedure Code of appointing a receiver in respect of the same property. The Magistrate's order under s. 145 is only intended to control any period up to the time when the Civil Court takes seisin of the matter and passes such orders as may be necessary for the protection of the property.(2) As to the power to appoint receivers in cases under the Rent Act, v. *ante*.

As has been already stated, the powers conferred by the last Code in respect of the appointment of a receiver could be exercised by High Courts and District Courts only provided that whenever the Judge of a Court subordinate to a District Court considered it expedient that a receiver should be appointed he might nominate a person and submit his name to the District Court which then authorized the Judge to appoint the person so nominated or passed such other order as it thought fit. Now the Subordinate Judge appoints direct.

The appointment may be made either by a Court of first instance, or by a Court of Appellate or Revisional jurisdiction. Where a Court of first instance dismisses a suit it becomes *functus officio* save that it may stay execution of its own decree or order

---

(1) *Hanumayya v. Venkatasub-bayya*, 18 M. 23.

(2) *Barkat-un-nissa v. Abdul Aziz*, 22 A. 214. See further at p. 34.



for costs. An application therefore made to a Court of first instance after dismissal of the suit but *before* appeal filed, asking that a receiver might be restrained from parting with funds in his hands, pending an appeal was *held* to be one which the Court had no jurisdiction to grant. The Court's jurisdiction extends no further in regard to a suit which has ceased to be a pending suit.(1)

An Appellate Court may also appoint a receiver.(1a) Thus in a suit by a mortgagee for foreclosure or sale in default of payment of his mortgage-debt the Court of first instance when passing decree for the plaintiff, refused, on the plaintiff's application, to appoint a receiver of the rents and profits of the mortgaged property. The plaintiff appealed against the latter part of the decree and after filing a memorandum of appeal obtained a rule for the appointment of a receiver until the hearing of the appeal. The Court of Appeal subsequently made the rule absolute and appointed a receiver until the hearing of the appeal, and when the appeal came on for hearing varied the decree of the Court below by appointing a receiver of the mortgaged property.(2) If therefore a party whose suit has been dismissed desires to have any measure taken for the realization, preservation, better custody or management of property claimed by him he is at liberty after filing his appeal to apply to the Appellate Court which has authority to make such an order and which will in a proper case make or continue the appointment pending the determination of the appeal. As in the case of original Courts a Court of Appeal may in a proper case review its own decree or order(3) and may for sufficient cause order the execution of decrees passed by Subordinate Courts to be stayed pending the hearing of the appeal(4) or it may advance the appeal. If a receiver has been appointed but the facts proved only warrant the issue of an injunction, the Appellate Court will set aside the order appointing a receiver and in lieu thereof will issue an injunction.(5) The High Court may by its

(1) *Yamin-ud-Dowlah v. Ahmed*, 21 C. 561. Author's Law of Injunctions. As to review and stay of execution, see Civ. Pr. Code, s. 114, O. XLI, rr. 5-6.

(1a) See *Vibhudapriya v. Lakshmindra*, 54 I. A. 228 : 1927 P. C. 131.

(2) *Jaikissondas v. Zenabai*, 14 B.

431 ; see *Barkat-unnessa v. Abdul Aziz*, 22 A. 214 ; *Grey v. Woogra*, 28 C. 790. [Vide also p. 22.]

(3) Civ. Pr. Code, s. 114.

(4) *Ib.*, O. XLI, rr. 5-7.

(5) *Chandidat v. Padmanand*, 22 C. 459.



revisional powers call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity, and may pass such order in the case as it thinks fit.(1) When a receiver of a property has been appointed by an Appellate Court pending an appeal to that Court, even when the appeal is no longer pending, he must be regarded as the receiver of the property of which he has been put in possession, until he is finally discharged, and the Appellate Court has jurisdiction to deal with matters relating to the receiver, including proceedings for contempt, until he has had his accounts passed by it.(2) Where a receiver has been validly appointed on the ground that the property was the subject-matter of the suit and it afterwards turns out on appeal that the decree only operates against the defendant personally the Appellate Court has jurisdiction to maintain the receiver as a method of realizing the decretal amount from the judgment-debtor personally.(3) In the case of a receiver appointed by the High Court application should be made for orders to that Court and not to a subordinate Court.(4) As a general rule the appellate Court does not interfere with the discretion of the first Court appointing a receiver though when the facts call for such action it will do so.(5)

§ 5. The exercise of the jurisdiction to appoint a receiver or issue an injunction(6) is not a matter *ex debito justitiæ* but one which is purely within the discretion of the Court. The latter is not bound to grant such relief merely because it is lawful to do so. But the discretion of the Court is not arbitrary, but sound and reasonable, guided by judicial principles and capable of correction by a Court of Appeal.(7) All questions of discretion are usually questions of

(1) C. P. Code, s. 115. See *Chunilal v. Sonabai*, 21 B. 328, 330; *Cheria v. Valia*, 1929 M. 20 : 114 I. C. 839.

(2) *Grey v. Woogra*, 28 C. 790; *Ramjan v. Abu*, 1945 s. 75.

(3) *Ramasami v. Ramasami*, 30 M. 255, 264 : 17 M. L. J. 201, 211.

(4) *Nur v. Subodh*, 53 C. 1174;

1956 A. 665.

(5) *Shivaji v. Aiswaryananda*, 29 M. L. J. 209 (1915) : 29 I. C. 485; *Benoy v. Satish*, 55 I. A. 131 : 32 C. W. N. 681; 1928 P. C. 49.

(6) Act I of 1877, ss. 44, 52.

(7) *Id.*, s. 22 "Discretion when applied to a Court of law means



degree.(1) Where there is a discretion exercisable the Court is bound to look at all the circumstances of the case.(2) The jurisdiction of the Court to interfere being equitable is governed on equitable principles. And, therefore, the Court will, amongst other things, look to the conduct of the person who makes the application.(3) Where an appeal attacks the exercise of discretion, before the Appellate Court will interfere on this ground in favour of the appellant, the latter must satisfy such Court that the discretion has been improperly exercised.(4)

The appointment as well as the removal of a receiver is also a matter which rests in the sound discretion of the Court.(5) In exercising its discretion the Court should proceed with caution(6) and be governed by a view of the whole circumstances of the case.(7) A receiver should not be appointed in supersession of a *bona fide* possessor of property in controversy unless there is some substantial ground for interference.(8) The power conferred by the Code to appoint a receiver is not to be exercised as a matter of course, and it is not a reason for allowing an application for the appointment of a receiver, that it can do no harm to appoint one.(9) The words 'Just and Convenient' in O. XL, r. 1 of the Civil Procedure Code mean that the Court should appoint a receiver for the protection of property or the prevention of injury, according to legal principle and not that the Court can make

discretion guided by law. It must be governed by rule and not by humour. It must not be arbitrary, vague and fanciful, but legal and regular" *per* Lord Mansfield in *Wilke's case*, 4 Burr., 2539, cited in *Harbuns v. Bhairo*, 5 C. 259, 265. See also remarks in *Queen-Empress v. Chagan*, 14 B. 331, 344, 352, *per* Jardine, J.; *Habib v. Abtia*, 23 C. L. J. 567.

(1) *Ghanasham v. Moroba*, 18 B. 474, 493 [Injunction Case].

(2) *Ghanasham v. Moroba*, 18 B. 474, 484. [For 'Sound, judicial discretion' see 14 C. W. N. 252].

(3) Act I of 1877, s. 56 (j); Kerr, 8.

(4) *Shadi v. Anup*, 12 A. 436, 438 F. B. [*per* Straight, J.]; *Bachraj v. Ramprasad*, 1955 M.-B. 40; (1955) 5 Raj. 402; 1915 M. 926 (wrong

view of facts).

(5) Act I of 1877, s. 44; Kerr 3; *Sidheswari v. Abhoyeswari*, 15 C. 818, 822, 823; *Chandidat v. Padmanand*, 22 C. 459, 464, 465. *Ex parte Jijai* 13 M. 390 [removal of receiver] *Mathuria v. Shibdayal*, 14 C. W. N. 252; *Benoy v. Satish*, 55 I. A. 131; 32 C. W. N. 681; 1928 P. C. 49; 108 I. C. 348.

(6) *Mun Mohiney v. Ichamoyee*, 13 W. R. 60; *Prosonomoye v. Beni Madhub*, 5 A. 556.

(7) *Owen v. Homan*, 4 H. L. 1033; *Sidheswari v. Abhoyeswari*, *supra*; *Chandidat v. Padmanand*, *supra*.

(8) *Mathuria v. Shibdayal*, 14 C. W. N. 252; *Alkama v. Syed Istak*, 29 C. W. N. 836. 1955 M. 430.

(9) *Prosonomoye v. Beni*, 5 A. 556.



such appointment because it thinks convenient to do so.(1) They confer no arbitrary and non-regulated discretion on the Court. It is no ground for the appointment of a receiver that allowances payable to beneficiaries under the deed of *wakfnama* were not paid from the time the defendant took possession of the properties as *mutwali* in the absence of any allegation of waste or mismanagement. If it is found that the estate is in danger, because no longer properly managed, or that difficulties have arisen in connection with litigation about the properties comprised in the estate, or that there is good ground to apprehend that the defendant may misapply trust-funds, the Court may properly appoint a receiver.(2) The discretion given by the Code is one that should be used with the greatest care and caution,(3) and the appointment of a receiver is a step which should not be taken without special reasons particularly in the case of a *bona fide* possessor with legal title.(4) The main principles upon which such discretion should be exercised have been laid down in the case of *Owen v. Homan*, (5) and those principles have been held to be as equally applicable in this country as in England.(6) In that case Lord Cranworth said : "The receiver, if appointed in this case, must be appointed on the principle on which the Court of Chancery acts, of preserving property pending the litigation, which is to decide the right of the litigant parties. In such cases the Court must of necessity exercise a discretion as to whether it will or will not interfere by this kind of *interim* protection of the property. Where, indeed, the property is as it were *in medio*, in the enjoyment of no one, the Court can hardly do wrong in taking possession. It is the common interest of all parties that the Court should prevent a scramble. Such is the case when a receiver of a property of a deceased person is appointed pending a litigation in the Ecclesiastical Court as to the

(1) *Habib v. Abtia*, 23 C. L. J. 567 ; *Bhupendra v. Monohar*, 28 C. W. N. 86 ; 1955 M. 430 ; 571 ; (1959) 2 An. W. R. 407.

(2) *Habib v. Abtia*, 23 C. L. J. 567 ; 34 I. C. 693.

(3) *Prosonomoye v. Beni*, 5 A. 556. [What is meant by 'greatest' ?]

(4) *Gossain Dulmir v. Tekait*, 6

C. L. R. 467, 469 (1880) ; *Mathuria v. Shibdayal*, 14 C. W. N. 252.

(5) 4 H. L. 497, 1032, 1033, quoted in 28 C. W. N. 86, 90.

(6) *Sidheshwari v. Abhoyeswari*, supra ; *Chandidat v. Padmanand*, supra ; *Roshan Lal v. Afzal*, Pak. L. D. 1949 L. 60.



right of probate or administration.(1) No one is in the actual lawful enjoyment of property so circumstanced, and no wrong can be done to anyone by taking it, and preserving it for the benefit of the successful litigant. But where the object of the plaintiff is to assert a right to property of which the defendant is in the enjoyment, the case is necessarily involved in further questions. The Court by taking possession at the instance of the plaintiff may be doing a wrong to the defendant; in some cases an irreparable wrong. If the plaintiff should eventually fail in establishing his right against the defendant, the Court may by its *interim* interference have caused mischief to the defendant for which the subsequent restoration of the property may afford no adequate compensation. In all cases, therefore, where the Court interferes by appointing a receiver of property in the possession of the defendant before the title of the defendant is established by decree, it exercises a discretion to be governed by all the circumstances of the case.”(2)

As in the case of injunctions, the Court will always look to the conduct of the party who makes the application for a receiver and will not interfere unless his conduct has been free from blame;(3) and parties who have acquiesced in property being enjoyed against their own alleged rights cannot come to the Court for this form of relief.(4) So in the undermentioned case it was *held* that the plaintiff's delay in instituting the suit was such as to disentitle him to relief by appointment of a receiver.(5) The distinction which exists between the cases in which the Court will exercise its discretion to grant an injunction or to appoint a receiver respectively has been already mentioned.(6) A stronger case is generally required for the appointment of a receiver than for the issue of an injunction. It may well be that circumstances which will warrant the issue of an injunction will not warrant the appointment of

---

(1) See *Joykally v. Shib*, Bourke, Test, 5 (1865); *Yeshwant v. Shankar*, 17 B. 388; *Alkama v. Syed Istak*, 29 C. W. N. 836 (matwali).

(2) *Owen v. Homan*, supra, 1032, 1033, quoted in 28 C. W. N. 86, 90.

(3) Kerr, 8; see *Baxter v. West*, 28 L. J. Ch. 169; cf. *Wood v. Hitchings*, 2 Beav. 297; *Seeni v. Santha*,

20 M. 58, 67, 68 F. B.

(4) *Ib.*; *Gray v. Chaplin*, 2 Russ 147; *Skinner's Company v. Irish Society*, 1 M. & Cr. 162.

(5) *Mathuria v. Shibdayal*, 14 C. W. N. 252, 255; 5 I. C. 27, Cf. *Athika v. Eratha*, 21 M. 42.

(6) *v. ante*.



a receiver. Accordingly, while the Court may in its discretion refuse to appoint a receiver, it may yet consider the case to be one which calls for an injunction. The opinion of the Court of first instance is, in these matters, of great weight. It has all the facts and the parties before it, and is probably the best tribunal to decide whether it is necessary or expedient, having regard to the circumstances of the case that a receiver should be appointed.(1) And a party who in appeal attacks the exercise of this discretion should show that the discretion has been improperly so exercised.(2) [*Vide* p. 27]

The exercise of the power being thus discretionary, it would be difficult, even if it were possible, with any precision to mark out the limits within which it is ordinarily circumscribed, but some of the principles which govern the discretion of the court in such appointment will be found considered more fully and in detail hereafter in those Chapters which specially treat of the cases in which a receiver may be appointed.

The best guides in the matter of interference by way of injunction and receiver have been judicially stated to be the principles which determine the action of courts of Equity in England.(3) It is, in fact, on these principles that the relief given in Indian Courts by injunction and receiver is, in the main, founded; and this relief is, in substance, the same as that granted by Courts in England. But since in India the Courts must follow the words of the Statute, and since the rules for the guidance of Indian Courts are to be found in the Specific Relief Act, the English cases to which reference can be made are only of use as illustrative of the principles embodied in the sections of the Act from the aspect that the Courts of Chancery in England have had to treat matters of a similar description. Yet when there is no specific rule, the Mofussil Courts and Presidency High Courts (the latter in their appellate jurisdiction) will be guided by the English case-law, so far as it is applicable, not because it is English but because it is in

(1) *Oriental Bank Corporation v. Gobinloll*, 10 C. 713, 737, *per* Garth, C. J. [*cf.* *Benoy v. Satish*, 55 I. A. 131 : 32 C. W. N. 681].

(2) See *Shadi v. Anup*, 12 A. 438.

(3) See *Nusserwanjee v. Gordon*,

6 B. 266, 284, 279; *Sidheswari v. Abhoyeswari*, 15 C. 818, 822, 823; *Chandidat v. Padmanand*, 22 C. 459, 464, 465 and cases cited in Author's *Law of Injunctions*; [*also Ganesh v. Harihar*, 31 I. A. 116 : 8 C. W. N. 521, 527].



accordance with that rule of equity and good conscience which these Courts are in such circumstances enjoined to follow. The Presidency High Courts, in the exercise of their ordinary original civil jurisdiction, may, in such circumstances, have recourse to the equitable jurisdiction which the High Courts have inherited from the Supreme Courts, which were, in their turn, vested with the general powers of the Court of Chancery. The law relating to injunctions and receivers in this country being thus practically the same as that which prevails in England resort may be had to the English case-law bearing on these subjects, and as the law of the United States is in general accordance with and founded upon English law, the decisions of the Courts of that country may also be referred to and cited in aid of the interpretation of the provisions contained in the Indian Codes and Acts.(1) The late Supreme Court of Bengal held that American decisions "are not authorities to which we must yield, as to the decisions of our own superior Courts; but they are in general well deserving of attention as able expositions of the law:"(2) and again, "with respect to the American decisions, they are not authority with us, though often extremely valuable as guides to the formation of a correct judgment."(3) And more recently in England Cockburn, C. J., observed as follows :—"The case before us presents itself, therefore, so far as our Courts are concerned, as one of the first impression, on which we have to declare, or perhaps, I may say, practically, to make the law. I am glad to think that in doing so we have the advantage of the assistance afforded to us by the decisions of the American Courts and the opinions of American jurists, whom accident has caused to anticipate us on this question. And, although the decisions of the American Courts are, of course, not binding on us, yet the sound and enlightened views of American lawyers in the administration and development of the law—a law, except so far as altered by statutory enactment, derived from a common source with our own, entitle their decisions to the utmost respect and confidence on our part."(4)

(1) See cases cited in Author's Law of Injunctions, 5th Ed. p. 5.

(2) *Malcolm v. Smith*, Taylor's Reports, 283, 288 (1848) per Sir L. Peel, L. J.

(3) *Braddon v. Abbott*, id. 342, 359 (1848), per Sir L. Peel, L. J.

In this and the case last mentioned American decisions were cited at the bar.

(4) *Scaramanga v. Stamp*, L. R. 5 C. P. D. 295, 303 (1880). [See *Macmillan & Co. v. Cooper*, 51 I. A. 109 : 28 C. W. N. 613, 620.]



The English Courts, however, allow as a general rule citation only of the decisions of the United States Supreme Court and then only when necessary.

The Presidency High Courts possess the same powers with regard to the appointment of a receiver as are possessed and exercised by the Courts in England under the Judicature Act of 1873, and the practice in respect of these matters should be the same.(1) So also the Code in the matter of the appointment of receivers gives a wide discretion to the Court. The words "just and convenient" in O. XL, r. 1 are derived from the English Judicature Act which greatly enlarged the powers which the Court of Chancery formerly exercised and the Courts in India have the fullest jurisdiction to appoint as well as remove a receiver in the exercise of a sound judicial discretion.(2) But this power is not, however, greater than that exercised by the Courts in England; and it must be exercised on the same principle, that is to say, with a sound discretion, on a view of the whole circumstances of the case, not merely circumstances which might make the appointment expedient for the protection of the property, but all the circumstances connected with the right which is asserted and has to be established.(3) In the earlier of the cases just cited it was said: "The principles to which we refer are stated in Kerr on Receivers,(4) by Lord Cranworth in *Owen v. Homan*(5) and in *Clayton v. The Attorney-General*.(6) We see no ground for the contention that these principles were not applicable in this country. They are adopted to prevent a wrong to the defendant which might equally be done here if they were not followed."(7) And the Court added that the principles referred to have not been relaxed since the passing of the Judicature Act in 1873.(8) It must not, however, be overlooked that the circumstances of this

(1) *Jaikissondas v. Zenabai*, 14 B. 431, 434.

(2) *Mathuria v. Shibdayal*, 14 C. W. N. 252; *Ramji v. Saligram*, 14 C. W. N. 248; 5 I. C. 96.

(3) *Sidheswari v. Abhoyeswari*, 15 C. 818, 822, 823, per Macpherson and Gordon, JJ., approved in *Handikat v. Padmanand*, 22 C.

459, 464, 465 per Ghose and Rampini, JJ.

(4) 8th Ed., p. 3.

(5) 4 H. L. C. 997, 1032.

(6) Cooper's Cases in Chancery, Vol. I, p. 97.

(7) *Sidheswari v. Abhoyeswari*, 15 C. 822, 823.

(8) *Ib.*



Country are, in many respects, very different from those of England. Not only may there be in India rights to be protected which are unknown to English law, but interests of which it does take cognizance may here require protection by injunction, or otherwise, in sets of circumstances in which it is not necessary to grant relief in England, or the converse may be the case. So in the matter of rules of procedure and practice, though the utmost respects should be paid to the wisdom and authority of English Courts, yet Courts in India are by no means bound to adopt all such rules as the Equity Courts in England may have established. Further as the mode of living in this country is different from that in England not only may such mode of life give rise to new rights, it may even in the case of such rights as are enforceable in both countries, present in particular cases new facts for consideration upon the question of the issue of an injunction or the assessment of damages.(1) So also in the matter of receivers the Court's decision may be affected by circumstances peculiar to this country. Thus in considering the question whether a power to a receiver to raise money on the property itself may be necessary to its own preservation regard must be had to the conditions under which estates are held in India.(2) Again, English rules and decisions may, in particular cases, be inapplicable owing to the fact that the relations which existed between the Court of Chancery and the Courts of Common Law in England were very different from those between the High Courts and the Mofussil Courts in India, as were also the respective functions and powers of these Courts. And though legislation may give to English Courts powers similar to those possessed by the Courts of this country, their discretionary exercise may here be different owing to circumstances peculiar to the former Courts existing anterior to such legislation. Lastly, where, as in certain instances, English law deals with rights peculiar to itself, their consideration is rendered here unnecessary; where, on the other hand, rights which require protection are peculiar to this country, English rules and decisions will be of service, if at all only by way of analogy; while as to such as are common to both countries differences both

---

(1) See cases cited in Author's Law of Injunctions, § 3.

(2) *Poresh v. Omerto*, 17 C. 614, 619 per Petheram, C. J.



in procedure and substantive law may render these rules and decisions partially or wholly inapplicable.(1)

The appointment of a receiver by a Civil Court under O. XL, r. 1 of the Code of Civil Procedure does not operate as [but tends to] a discharge of the receiver of the same properties already appointed by a Magistrate under s. 146 (2) of the Code of Criminal Procedure, [as amended in 1923]. As a general rule, when there is a receiver in possession appointed by the Magistrate, and application is made to the Civil Court to exercise its powers under O. XL, r. 1 of the Code of Civil Procedure, the Civil Court should make a conditional order of appointment and inform the Magistrate so that the latter may have an opportunity of withdrawing his attachment. Unless there is good reason to the contrary, the Civil Court should, as a matter of judicial discretion, appoint as its receiver the person already appointed by the Magistrate.(2)

§ 6. Assuming that in any particular case the Court has jurisdiction to grant relief, and that the circumstances are such that it would be a proper exercise of its discretion to do so, and that it has in fact done so either by ordering an injunction to issue or a receiver to be appointed, it remains to be considered how these orders are enforced and made effectual to secure the redress sought by those in whose favour they are made. A judgment of the Court which is *in personam* may be enforced by process *in personam*, that is by attachment of the person when the person is within the jurisdiction, or by sequestration of the goods or lands of the defendant, when these are within the jurisdiction of the Court, until the defendant do comply with the judgment or order of the Court.(3) This power of attachment which has been termed the keystone of the equitable jurisdiction, results from the first principles of judicial establishments and must be an inseparable attendant upon every superior tribunal. Under the authority conferred by the Charters of the Supreme Courts and continued by their own Letters Patent, the High Courts in India possess the power of enforcing obedience

(1) See cases cited in Author's Law of Injunctions, § 3.

(2) See *Bidya v. Ashrafi*, 40 C. 862: 20 I. C. 269 : 17 C. W. N. 1070 ; also (1961) Cut. 264. *Barkat-un-nissa v.*

*Abdul Aziz*, 22 A. 214, distinguished. Cf. 30 C. 593.

(3) *Penn v. Lord Baltimore*, 1 Ves. 444 ; v. ante.



to their orders by *attachment for contempt*,<sup>(1)</sup> and they have all the powers of a Court of Equity in England for enforcing their decrees *in personam*.<sup>(2)</sup> The jurisdiction of the High Court to imprison for contempt is a jurisdiction that it has inherited from the old Supreme Court, and was conferred upon that Court by the Charters of the Crown which invested it with all the powers and authority of the then Court of King's Bench and of the High Court of Chancery in Great Britain, and this jurisdiction has not been removed or affected by the Civil Procedure Code.<sup>(3)</sup> The power of the Mofussil Courts to commit for contempt otherwise than under the authority of special statutory enactments conferring, or of case-law recognising, that power is a matter of doubt.<sup>(4)</sup>

A receiver is an officer of the Court, and the Court will therefore see that he performs his function and will protect the agent appointed under its orders.<sup>(5)</sup> Being such officer his possession is simply the possession of the Court, and to such an extent is this the case, that any attempt to disturb that possession, without the leave of the Court, is a contempt of Court.<sup>(6)</sup> Thus an attachment of money in the hands of the receiver is an interference with the Court's possession through its officer, the receiver, and may not therefore be made without the Court's leave first obtained.<sup>(7)</sup> The mere appointment of a receiver operates as an injunction against the parties, their agents and persons claiming under them, restraining them from interfering with the possession of the

(1) *Hassonbhoy v. Cowasji*, 7 B. 1; *Navivahoo v. Narotamdas*, 7 B. 5; [*Surendro N. Banerjee's Case*, 10 I. A. 171; 10 C. 109].

(2) *H. H. Shrimant Maharaj Yashwantrao Holkar v. Dadabhai Cursetji Ashburner*, 14 B. 353, 359; per Sargent, C. J., citing *Martin v. Lawrence*, 4 C. 655; *Hassonbhoy v. Cowasji*, 7 B. 1.

(3) *Martin v. Lawrence*, 4 C. 655; per White, J.; *Hassonbhoy v. Cowasji*, supra, 4; *Navivahoo v. Narotamdas*, supra, 12, 13; *King-Emperor v. Timmal*, 24 M. 523, 548 note; [*Chandamull v. Sardarlal*, 40 C. W. N. 1285].

(4) See *Hassonbhoy v. Cowasji*, supra at p. 3; *Navivahoo v. Narotamdas*, supra; also Contempt of Courts Act XII of 1926.

(5) *Dinnonauth v. C. S. Hogg*, 2 Hay, 395, 397. [See *Beni Madhab v. Deb*, 24 C. W. N. 138, 141 (Common Manager)); *Kuratul v. Broughton*, 1 C. W. N. 336, 338 (administrator)].

(6) *Wilkinson v. Gangadhar*, 6 B. L. R. 486, 487; 1958 Punj. 471.

(7) *Kahn v. Ali Mahomed*, 16 B. 577; *Zohur v. Noor*, 21 C. 85. The Sheriff may not disturb the possession of a receiver. Kerr, 215.



receiver except by permission of the Court.(1) The Court requires and insists that application should be made to it for permission to take possession of any property of which the receiver has taken, or is directed to take, possession. The rule is not confined to property actually in the hands of a receiver. The Court will not permit anyone, without its sanction and authority, to intercept or prevent payment to the receiver of any property which he has been appointed to receive, though it may not be actually in his hands.(2) The form in which the Court usually enforces its orders in the matter of receivers is in extreme or aggravated cases by committal to prison or ordinarily by ordering the party in contempt to pay the costs and expenses occasioned by his improper conduct and the costs of the application. In cases where the contempt consists in entering upon land in the possession of a receiver or in bringing an action against the receiver or against a party over whose property a receiver has been appointed, the Court restrains by injunction the trespass or prosecution of the action and orders the party in contempt to pay the costs of the application.(3) The High Courts in India being Superior Courts of Record have full powers to punish for contempt of their orders committed either directly, or through interference with the action of officers appointed by them.(4) It has already been observed that the nature and extent of the powers of Mofussil Courts in the matter of contempt is doubtful in the absence of express statutory provision on the subject. The Civil Procedure Code does not directly provide for the case of the breach of, or the enforcement of, orders under O. XL, (otherwise than in execution of a decree), as it does in the case of interlocutory orders under O. XXXIX.(5) But the order appointing a receiver operates *per se* as an injunction and, if necessary, for the purpose of giving express effect to the order, an injunction may be granted in terms. [See also Act XII of 1926, s. 2].

Although ordinarily the receiver does not himself apply for commencing proceedings by way of contempt, and, generally speaking, action is taken by the parties beneficially interested,

(1) *Zohur v. Noor*, supra, at p. 91.

(2) *Kerr*, 199; *Ames v. Birkenhead Docks*, 20 Beav. 353; *P. Ray Chaudhuri v. Nolini*, 18 C. W. N. 289; *Kilachand v. Ajodhya*, 59 B. 10.

But see 45 I. C. 117 (Pat.).

(3) *Kerr*, *op. cit.*, 214.

(4) *v. ante*, and cases there cited.

(5) *Kochappa v. Sachi*, 26 M. 494.



there is nothing to prohibit his doing so.(1) When a receiver is appointed by an Appellate Court, the latter has, even although the appeal be no longer pending, jurisdiction to deal with matters relating to the receiver, including proceedings for contempt, until he has had his accounts passed by it.(2)

A receiver may himself be guilty of contempt in two ways ; where he refuses or neglects to comply with the order of the Court appointing him ; and where there is a conflict of receivers and one or two or more receivers of the same property interfere with the possession of another receiver or prevent or hinder the due discharge of duty by that other receiver in respect of the property in dispute. In such cases the Court will first determine the question of priority and direct as to the transfer of the property before it will entertain proceedings for contempt. A receiver being a mere officer of the Court is bound to obey every order of the Court, and if he neglects or refuses to comply therewith, he stands in no better position than any other person, and may be punished in the same way.(3)

A receiver, appointed under s. 56 of the Land Registration Act, is not a public servant within the terms of ss. 174, 175, 186 and 188 of the Penal Code. Such a receiver is not a public servant legally competent to issue an order directing persons to attend before the Collector with their collection-papers and rent-receipts, and disobedience to such an order does not constitute an offence either under s. 147 or s. 175 of the Penal Code. An order by such a receiver forbidding persons to pay rent to any person other than the receiver is not an order promulgated by a public servant lawfully empowered to promulgate such order, and disobedience to such order is not an offence within the terms of s. 188 of the Penal Code. Persuasion addressed to tenants in the absence of such receiver not to pay rent to him is not an obstruction of the receiver within the provisions of s. 186 of the Penal Code.(4)

(1) *Grey v. Woogra*, 28 C. 790.

(2) *Ib.* See also *Muthu Vira v. Mayandi*, 1930 M. 67 : 52 M. 967.

(3) Beach, § 248 ; where also a liquidator is in possession the receiver will be in contempt if he

moves against him without leave, *Kerr*, 174, 175.

(4) *Ebrahim v. Emperor*, 29 C. 236. See further as to the receiver's possession and contempt, Ch. II, *post*.



## CHAPTER II

### THE APPOINTMENT

§ 7. Who may be appointed. Persons may be appointed to be joint Receivers. § 8. Subject-matter of appointment. § 9. Time when Receiver may be appointed. § 10. Time from which appointment takes effect. § 11. Duration of appointment.. § 12. Mode of appointment. § 13. Security. § 14. Order cannot be questioned collaterally. § 15. Effect of appointment. § 16. Possession and interference with possession of Receiver. § 17. Suits and applications against Receiver.

§ 7. A receiver being an impartial person as between the parties, and being the officer and representative of the Court in the management and control of the property or fund in controversy, considerable importance attaches to the question of his selection as well as to his qualification and competency for the management of the property entrusted to his charge. The Court may make the appointment itself directly without a reference, or it might, according to the former English practice, refer the matter to a Master to make the selection in which case the parties are at liberty to appear before that officer and to nominate suitable persons whose qualifications and competency are passed upon by the Master who makes the appointment and reports his selection to the Court.(1) In this country the receiver is appointed generally directly or by reference by the High Court or District Court and now also by Subordinate Courts. In the High Court in cases where the parties agree to a particular private person being appointed receiver, the Court so appoints him; where however, the parties cannot agree, the Official Receiver is appointed. As a general rule the right to propose a person for appointment as receiver belongs to the party interested in obtaining the appointment and effect will be given to his nomination.(2) Where the

(1) High, § 63.

(2) *Eastern Mortgage Co. v.*

*Rakea*, 16 C. W. N. 997 : 17 I. C. 202.



property is land paying revenue to Government or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.(1)

In cases other than those in which the Court Receiver or Collector is appointed any person may be selected subject to certain general rules which have their basis in the nature of the office of receiver and the functions to be discharged by him. Inasmuch as a receiver is required to be an impartial person the person chosen should, as a general rule, be wholly disinterested in the subject-matter of the suit. The Court may, however, with the consent of all the parties or, in very special cases, without such consent appoint as receiver a person who is mixed up in the subject-matter of the suit if it is satisfied that the appointment would be attended with benefit to the estate. So a mortgagee in possession and owner have been appointed; and it is common practice in partnership cases to appoint a party to the action where the other party consents, though as already stated the appointment may be made without such consent in very special cases. A party will not, however, be appointed unless upon his undertaking to act without salary, and when appointed he does not thereby lose his privilege as party in the cause.(2) So it has been held that though one of the parties to a litigation or person connected therewith should not ordinarily be appointed a receiver except in special circumstances, such circumstances were held to exist in the case cited.(3) *A fortiori* while the fact of relationship of a person to either of the parties is not *per se* an absolute disqualification for the receivership yet it must be allowed to have its proper weight in connection with other circumstances. And in a case where the person appointed was the brother of one of the parties and the son of one claiming to be a large creditor and was admitted by the plaintiff to have taken an active part in the controversy as his friend and agent, he was regarded as too much

(1) Civ. Pr. Code, O. XL, r. 5.

(2) Kerr, 138, 143; *Bhupendra v. Monohar*, 28 C. W. N. 86.

(3) *Suprasanna v. Upendra*, 18

C. W. N. 533 : 18 C. L. J. 638 ; or where there is consent : *Kali Kumari v. Bachchan*, 17 C. W. N. 974 : 19 I. C. 873.



enlisted in the cause to permit him to be as unbiassed and impartial as a receiver should be, and was therefore removed. It is also regarded as exceedingly objectionable to appoint as receiver a person who is in the interest of the defendant against whom the appointment is made.(1)

Apart from the question of interest the Court will consider the character and qualifications of the person proposed; his familiarity with the kind of property to be managed, his place of residence with reference to the estate to be managed, his ability to spare sufficient time for the duties of his office and other similar facts bearing upon the appointment.(2) Residence beyond jurisdiction is not by itself a fatal objection, but when a non-resident is appointed receiver, there must be adequate guarantee that he will be subject to the effective control of the Court. Residence at a great distance from the property which is to be subject to his management and control, while not regarded as an absolute disqualification for the office, is an important circumstance to be taken into consideration. Where amongst two rival claimants for appointment as guardian of a minor's property the appointment of one by the District Judge was set aside on the ground of irregularities and the District Judge was asked to reconsider the matter and the District Judge, pending trial, appointed the same individual receiver under sub-s.(1) of s. 12 of the Guardians and Wards Act, although he was a resident outside the Judge's jurisdiction and no security was taken from him : *Held*,—in revision, that the appointment was bad and should be set aside.(3)

The second general rule is that the Court is averse to appointing as receivers persons occupying relations of trust as trustees, executors, or otherwise towards the property or estate which is the subject of the receivership. The reason of this rule is that the Court is exceedingly jealous of appointing any person to a receivership whose duty it would otherwise be to watch the

(1) High, § 67. A receiver should ordinarily be an indifferent person : p. 1; *Shamuldhun v. Lakhmani*, 13 C. L. J. 459 : 6 I. C. 323.

(2) *Ib.*, §§ 64, 68, 69; Kerr, 119,

120; *Suprasanna v. Upendra*, *infra*.

(3) *Kali Kumari v. Bachchan*, 17 C. W. N. 974; and see *Suprasanna v. Upendra*, 18 C. L. J. 638 : 18 C. W. N. 533 : 22 I. C. 601.



proceedings of the receiver or to call him to an account for his management. The Court in this class of cases expects the trustee to watch the proceedings with an adverse eye and to see that the receiver does his duty. The *cestui que trust*, if he is to have a receiver, is entitled to the superintendence of the trustee as a check. The rule has been extended to other persons than trustees. Thus it has been held that as it is the duty of a next friend to watch the accounts and check the conduct of a receiver of the infant's estate the two characters are incompatible with each other; and upon similar grounds it has been held that a solicitor in the cause cannot be appointed receiver because it is his duty to contest the receiver's accounts.(1) In this instance also as with regard to interest, the Court will in special cases appoint a trustee where such appointment would be beneficial to the estate as where the trustee has a peculiar knowledge of the estate, or no one else can be found who will act with the same benefit to the estate.(1a)

Where an application is made to appoint a receiver and an application is also made to appoint a liquidator, the Court will, in order to avoid expense and inconvenience, take care that the receiver and the liquidator should be the same person in every case where that can properly be done and the Court will usually, though not always, remove a receiver appointed before the commencement of the winding-up proceedings or after a winding-up order has been obtained, and appoint the liquidator to be receiver in the place of the receiver to act as receiver as well as liquidator.(2)

The fact that an application for the appointment of a Common Manager of the property in suit is pending before the District Judge does not preclude the Subordinate Judge before whom the suit is pending from appointing a receiver in a proper case. Where it was common ground that no one was in effective possession of the property and in a position to collect the rents and pay the Government revenue,

(1) *Johurmull v. Kedar*, 55 C. 113 : 31 C. W. N. 953 : 1927 C. 714 (Attorney); cf. *Aiya v. Tenammal*, 1917 M. 1009 : 35 I. C. 839 (Guardian).

(1a) High §§ 70, 74, 75; Kerr. 139. Though there is no inflexible rule, a trustee should only be generally

appointed upon the term of his having no remuneration. *Re Bignell* (1892), 1 Ch., 59; *Sutton v. Jones*, 15 Ves., 584; *Pilkington v. Baker*, 24 W. R. 234.

(2) Kerr. 145. See 15 C. W. N. 672, 676 (common manager was also receiver).



the Court could hardly go wrong in appointing a receiver.(1)

In all cases the selection of a particular person for the receivership is regarded as a matter of judicial discretion to be determined by the Court according to the circumstances of the case. The exercise of this, like all other matters of judicial discretion, will rarely be interfered with by an appellate tribunal, and it may be stated, as a general rule, that, to induce an Appellate Court to interfere with the decision of an inferior tribunal in the selection of a receiver, it is necessary to show some "overwhelming objection in point of propriety of choice or some objection fatal in principle" to the person named.(2)

When two persons are appointed joint receivers unless there is a direction or an indication to the contrary in the order of appointment, the intention of the Court must be deemed to be that they, as officers of the Court, should meet and discuss together the questions, which come before them for determination in the course of the management of the estate, and that in all matters which require the exercise of judgment and are not purely ministerial, the action taken should be the result of their united deliberation. The very object of appointment of joint receivers would be defeated if one were held competent to delegate his functions to the other. So a notice to quit given by one of two joint receivers, on behalf of both, is not a valid notice and cannot terminate a tenancy. The doctrine that where there is a demise by joint tenants, one may give notice on behalf of all, does not apply to the case of joint receivers. If the notice to quit is given by an unauthorised person, a subsequent ratification will not make it effectual, since the notice must be one which is in fact binding on the landlord when it is served.(3) Resignation of one of the receivers does not terminate the order appointing.(4)

Persons may  
be appointed  
to be joint  
receivers.

(1) *Jibanessa v. Majidunnissa*, 17 C. W. N. 581 : 18 I. C. 398.

(2) *Cookes v. Cookes*, 2 DeG. J. & S. 526, at p. 528, per Knight Bruce. L. J.; *Perry v. Oriental Hotels Company*, L. R., 5 Ch. App., 420 ; High, § 65. *Kali Kumari v.*

*Bachchan*, 17 C. W. N. 974 ; *Jibanessa v. Majidunnissa*, 17 C. W. N. 581 : 18 I. C. 398.

(3) *Cassim v. Eussuf*, 23 C. L. J. 453 : 34 I. C. 221.

(4) *Eastern Mortgage Co. v. Premananda* 20 C. W. N. 789.



§8. Under the provisions of s. 503 of the last Code a receiver might have been appointed of *any* property, whether movable or immovable, provided it was the *subject-matter of a suit or under attachment*. Nothing in this section authorised the removal from the possession or custody of property under attachment of any person whom the parties to the suit or some or one of them had not a present right to remove. Under s. 504 of the same Code where the property was land paying revenue to Government, the Collector might with his consent be appointed. In the present Code the qualifying words "subject-matter of a suit or under attachment" have been omitted, but the law remains substantially the same. According to English law a receiver may be appointed of the rents and profits of real estate and also of all personal estates which may be taken in execution at law or is considered in equity as assets.(1) It is not necessary that the property should be in England or indeed in any of the British dominions,(2) and the same rule applies in this country.(3) Inasmuch as a receiver may be appointed of any property it is not necessary to enumerate the cases in which appointments have been made. Besides the more ordinary cases receivers have been appointed over a newspaper; equity of redemption; a fund in another Court payable to a judgment-debtor; income of a trust fund;(4) judgment-debtor's interest in a policy of insurance; reversionary legacy and interests; ships, their gear, freight and machinery; profits of a business(5) and over pensions which may lawfully be assigned,(6) ghatwali profits,(7) etc. It has, however, been held that there cannot be a receiver of pay, half pay or salary or pension the assignment of which is void as being against public policy,(8) or of the profits of an ecclesiastical benefice since a

Subject-matter of appointment.

(1) Kerr, 116 *et seq.* A receiver can now be appointed of property not the subject of the suit. *Satru-charla v. Ramchandra*, 1926 M. W. N. 937 : 96 I. C. 194.

(2) Kerr, 124.

(3) *v. ante*, Ch. I. Ch. III.

(4) *Syed Asad v. Wahid*, 30 C. L. J. 231.

(5) Kerr, Ch. III, *et ibi casas*.

(6) *Heald v. Hay*, 3 Giff., 467; *Wilcock v. Terrel*, 3 Ex. D., 323; *Dent v. Dent*, 1 Pr. & D., 367; Kerr, 116 *et seq.*

(7) *Keshabati v. Mohan*, 39 C. 1010. See *Nawab Bahadur v. Karnani Bank*, 58 I. A. 215 : 35 C. W. N. 791 : 1931 P. C. 160.

(8) *Apthorpe v. Apthorpe*, 12 P. D., 192; *Ex parte Huggins*, 21 Ch. D., 85; *Re Mirams* (1891), 1 Q. B. 594; *Cooper v. Reilly*, 1 R. & M., 560, Kerr, 117; *contra* where the assignment of salary is not void. *Re Mirams*, *supra*. See as to pensions and salaries, Woodroffe & Ameer Ali's Civil Procedure Code.



beneficed clergyman is prohibited from charging the fruits of his living.(1) Where the receiver appointed by the Court was directed to take possession of movable properties and of the rents and profits of the immovable properties and was further authorised to get in and collect all debts and claims due to the estate, *held*,—that he must be taken to have been appointed receiver in respect of the whole estate and had authority to apply for an order absolute on a decree *nisi* for foreclosure. A sale of the foreclosure-decree while the estate was in the possession of the receiver in execution of a decree for money, without leave of the Court previously obtained, was illegal and liable to be avoided : and punishment by the procedure for contempt was not the only remedy against such unauthorised sales. The provisions of s. 248 are not mandatory.(2) By reason of the provision in section 213 of the Indian Succession Act XXXIX of 1925 which applies to the Hindus under clause 2 of that Section “that no right to the property of an intestate can be established unless administration had been previously granted by a competent Court,” the receiver appointed by Court is not competent to take possession of the securities and moneys without a certificate under s. 214 of the Indian Succession Act ; but regard being had to the provisions of the Indian Securities Act, 1886, and s. 3, sub-s.(2), s. 6, sub-s.(1) clause (f), and s. 8, clause (c) of the Succession Certificate Act (VII of 1889), a Succession Certificate would be needed if a suit was brought to establish a title to such funds by right of inheritance.(3) In all cases [under the old codes] the property must be the subject-matter of a suit or under attachment. Thus in a suit upon a mortgage the mortgaged property was directed to be sold and the time of grace had expired. An application was then made by the judgment-debtor to the Court of execution for the appointment of a receiver both as regards the mortgaged property as well as other properties belonging to the judgment-debtor. It was, however, *held* that the Court had no power to appoint a receiver of properties other than the subject-matter of the suit and as regards the mortgaged

(1) Kerr, 120.

(2) *Levina Ashton v. Madhabmani*, 14 C. W. N. 560 : 5 I. C.

390.

(3) *Harihar v. Harendra*, 37 C. 754 ; 12 C. L. J. 252 ; 6 I. C. 416.



property a receiver could not be appointed on the mere ground that the property would not fetch so much by forced sale as it would by sale under a private contract. If it were so, the result would be that in any case a judgment-debtor could require that decree be not executed in the manner provided by law, but that a receiver be appointed.(1) Ordinarily a receiver should be appointed only of so much of the property as is in dispute.(2) Where, therefore, the property in dispute in a suit was not entire movable and immovable property in the possession of the defendant, but the half share to which the plaintiff laid claim, a Court was held to have acted beyond its powers in appointing a receiver of the entire property in the hands of the defendant and not merely of the share claimed by the plaintiff.(3)

In, however, suits for partition of joint estates the Court has jurisdiction to place the whole of the joint estate out of which the plaintiff seeks to have his share partitioned in the hands of a receiver, and to order that the latter shall be at liberty to raise money on the security of the whole of such joint estate.(4) As regards undivided shares it has been said that to appoint a receiver and to issue an injunction which shall affect an undivided half share only, is an impossibility.(5) But in an earlier decision(6) the Court remarked as follows :--“Then under s. 92 in any suit in which it shall be shown to the satisfaction of the Court that any property which is in dispute in the suit is in danger of being

(1) *Latafut v. Anunt*, 23 C. 517 ; in *Kartic v. Padmanand*, 11 C. 496, it was argued that the rents payable by the tenants formed no part of the subject-matter of the suit ; it was held that if the suit had been simply for recovery of arrears, s. 503 of the former Code would not have applied, but that in fact the suit was for the recovery of the tenure itself. See also in which question was raised as to what was the subject-matter of suit, *Subramanya v. Appasami*, 6 M., 355—356 ; *Yeshwant v. Shankar*, 17 B. 388, 391, 392.

(2) *Joynarain v. Shibpersad*, 6 W. R. Misc., 1 (1866).

(3) *Ib.*

(4) *Poresh v. Omerto*, 17 C., 614.

(5) *Mun Mohinee v. Ichamoyee*, 13 W. R. 60, but see *Joynarain v. Shibpersad*, 6 W. R. Misc., 1 (1866), *ante*.

(6) *Joynarain v. Shibpersad*, 6 W. R. Misc., 1 (1866). “But he (Principal Sudder Amin) has gone beyond the very utmost limit to which he could possibly have gone under s. 92, because he has placed under attachment and appointed a receiver for the entire property movable and immovable in the hands of the defendant and not merely the share claimed by the plaintiff.” *Ib.* at p. 2 : and see *Buddinath v. Bycaunt*, 2 Tayl. & Bell : 192.



wasted, damaged or alienated, it shall be lawful to issue an injunction. The property in dispute in this suit was not the entire movable and immovable property in the possession of the defendant but the half share to which the plaintiff laid claim. If, therefore, it were shown to the satisfaction of the Court that the defendant in possession was likely to damage or make away with the half share which the plaintiff claimed, it was open to the Court to make an order under s. 92." Receivers have, however, been appointed of undivided shares though equity is generally averse to extending the aid of a receiver as between joint owners, or tenants-in-common.(1) It has been held that a plaintiff claiming a moiety of an estate as a tenant-in-common with the defendant may have a receiver of the rents and profits of such moiety when defendant is in possession of the whole; and he may also have an injunction to restrain the defendant from receiving the rents of such moiety, as well as an order upon the tenants of that part of the estate to attorn to the receiver, (2) So it has been ordered that a tenant-in-common in possession should give security to his co-tenant for the portion of rents due to him, or in default thereof, that a receiver be appointed.(3) And in the case of equitable tenants-in-common of realty, the legal title to which is in a trustee for the benefit of the co-tenants, the fact that the trustee has put one of the co-tenants in possession will justify a receiver on behalf of the other tenants over their own shares, but not over the entire property, since the tenant in possession is entitled to the possession of his own share of the property.(4) But when the conduct of the defendant in possession is such as to amount to an exclusion of his co-tenants, they are entitled upon the hearing to a receiver of the whole property.(5)

(1) High, § 606.

(2) *Hargrave v. Hargrave*, 9 Beav., 549.

(3) *Street v. Anderton*, 4 Bro. C. C. 414.

(4) *Sandford v. Ballard*, 30 Beav., 109.

(5) *Id.*, 33 Beav., 401. See High, 605; Kerr, 107; see also *Calvert v. Adams*, 2 Dickens, 478; *Evelyn v. Evelyn*, *id.*, 800. The point discus-

sed in the text is as to the power of the Court to appoint a receiver of a share which is, of course, different from that whether the Court will or will not interfere as between joint owners or tenants-in-common as to which see High, §§ 603, 606. See in this connection Bengal Tenancy Act, s. 88, and as to the separation of Government revenue, s. 10, Act XI of 1859.



In the undermentioned suits,(1) the first of which was for an account and for partition of joint-estate and the second for construction of the will and administration of the estate of the great grand father of the plaintiff in the first-mentioned suit, various proceedings were had, and ultimately a settlement was arrived at, under which it was agreed that the defendants in the first suit should pay to the plaintiff a certain sum of money by instalments, and the certain immovable properties which had been allotted to the defendants under the returns of the Commissioners of partition made in these suits, should be charged with payment of this sum with liberty to the plaintiff, in default of payment of two successive instalments, to have the charged properties sold by order of Court. All the properties were situated without the jurisdiction, and some of the defendants were residing without the jurisdiction. The plaintiff subsequently applied for the appointment of a receiver of the charged properties on the ground that his security was imperilled. Two of the defendants consented to the appointment, but others opposed it on the grounds that the Court had no power or jurisdiction to appoint a receiver, and that if it had, no case had been made out for the appointment. The Court stated as follows : "The first objection taken is that all the properties are situate out of the jurisdiction of the Court, and that the Court has no power to appoint a receiver over them, and authorities have been cited as to the sales of the properties outside the jurisdiction of the Court, and reference has also been made to cases where decrees have been made for maintenance and properties situate outside the jurisdiction charged with the payment of such maintenance. The authorities have not much bearing on the present question. The properties in suit have been partitioned by this Court, and I should be inclined to hold that the Court has full power to appoint a receiver of those properties to protect the rights of the plaintiff created by the compromise. The difficulty is whether a sufficient case has been made out for a receiver.....I do not think the ground relied on are sufficient to justify the appointment of a receiver of the whole estate.....I think the course I ought to take

---

(1) *Radhanath v. Paresh*, suit 567 of 1874 ; *Kamal v. Paresh*, suit 307

of 1875, Calcutta H. C.



is to appoint a receiver of the *one-fourth* share of the two defendants who consent and refuse the application as to the three-fourths." (1) Against this order the consenting defendants appealed on the grounds, amongst others, that though the appellants consented to the order as asked for by the plaintiff for the appointment of a receiver of the whole of the said properties, yet they never consented to the appointment of a receiver of their own one-fourth share only : and that the Court had no jurisdiction or power to appoint a receiver of the one-fourth share. The appeal, however, was compromised. By consent the receiver was discharged upon the appellants' undertaking to pay a certain sum to the respondents within a time specified. (2) Where one entitled to a share of real estate applied for a receiver of the *entire* joint property—and some of the co-sharers who resisted the appointment were not subject to the jurisdiction—a receiver was granted limited to the share of the applicant and against those only who were subject to the jurisdiction. (3)

The subject-matter of the appointment must have been under the last Code, and will ordinarily at least be under the present Code property movable or immovable which is "*the subject of a suit*" (4) or is "*under attachment.*" When it was contended that in a suit for partition of joint estate the sole purpose was to give the plaintiff possession of a divided share and that the only property which was the subject of the suit was the plaintiff's share and that the Court had no jurisdiction to place anything more than that share in the hands of a receiver, it was held that the property in suit was the whole joint estate, inasmuch as until it was partitioned, the plaintiff had an interest in every portion of it ; that in a suit for partition of a joint estate the words "property the subject of a suit" in s. 503 of the last Code meant the whole joint estate, and the words "the owner" in s. 503(d) meant the whole body of owners to whom the joint estate belongs ; and thus consequently the Court had jurisdiction to place the whole of a joint estate out of which a

(1) *Id.*, Cor. Sale, J., 13th July 1899.

(2) *Id.*, Appeal from Order No. 27 of 1899 (Jan. 24, 1900).

(3) *Buddinath v. Bycaunt*, 2

Taylor and Bell's R., 192 (1851).

(4) Under s. 92 of the earlier Code the words were "*property which is in dispute in a suit*"; see *Joynarain v. Shābpersad*, 6 W. R., Misc., 1 (1866).



plaintiff seeks to have his share partitioned in the hands of a receiver and to order that a receiver so appointed should be at liberty to raise money on the security of the whole of such joint estate.(1)

Where in a testamentary suit it was argued that the property of the deceased was not the subject of a suit it was said—"possibly not directly, but the present suit is to determine who is to have the possession and management of the property of the deceased, in fact who is to be the person in whom all the rights of the deceased are to vest and thus become the legal owner. If a suit were brought on the civil side to determine who had the right to the possession and management of property, the provisions of the Specific Relief Act (I of 1877) would ordinarily require a prayer to be inserted for possession of the property, but I cannot see the substantial difference as regards *interim* remedies between a suit in this form and a suit on the testamentary side, the result of which will be to declare that, by virtue of the provisions of a will, a certain person has the right to stand in the shoes of a deceased owner and thus be entitled to have the possession and management of all his property. It seems to me that the property is the subject of the suit in the one case directly because possession is sought, and in the other because the decree will determine who is to have authority over, and to be entitled to get possession of, certain property which is set out in a schedule to the petition for probate or letters of administration. Consequently I see nothing in the law relating to procedure which would prevent the appointing a receiver in this case without regard to any consent on the part of the plaintiff."(2)

Where a zemindar who was indebted to certain Chettys executed a bond in their favour and hypothecated the income which he might derive from certain villages, and the Chettys brought a suit against the zemindar to enforce payment of the debt upon the security of the income hypothecated, and asked for the appointment of a receiver before judgment, the Court said :—"If it were necessary to decide the point we

(1) *Poresh v. Omerto*, 17 C. 614. This is in accordance with the practice of the Court of Chancery under the Judicature Act and with the practice of that Court before the

passing of that Act even where there had been no exclusion, *ib.*, at p. 618.

(2) *Yeshwant v. Shankar*, 17 B. 388, 391. See also *Subba v. Andemma*, 1951 M. 393.



should hesitate to say that the income of the villages was 'the subject of the suit' within the meaning of s. 503 of the Code. The subject of the suit is the debt which is claimed, and the sale of the hypothecated income is merely a mode of obtaining payment." (1)

As a general rule, a receiver takes no title in property acquired by the person formerly in possession. But a receiver is entitled to any accretion to the property vested in him, upon general principles and the policy of the law by which a proprietor acquires a title to accessions to his property. Where a receiver has been appointed under s. 146 of the Criminal Procedure Code in respect of any property in dispute, the receiver is entitled unless some special circumstances is established not only to the subject-matter of the proceedings under s. 145, Criminal Procedure Code, but also to the accreted land and gives good title to a tenant under him. Such title will prevail against a trespasser but not against a person who establishes a title to the accreted land acquired prior to the vesting of the lands in the receiver. (2)

In the undermentioned case (3) the plaintiff sued for arrears of rent and for ejectment of the defendants under the Rent Act. A receiver was appointed to take charge of the property held by the tenants on a lease. Against this order one of the defendants appealed on the ground that s. 503 of the last Code was inapplicable; that a receiver could not be appointed to collect the rents and profits of the *mehal*; that the rents payable by the tenants formed no part of the subject-matter of the suit and could not therefore be made over to a receiver, and that the suit being under s. 52 of the Rent Act, s. 503 of the Code had no application. It was held that, although having regard to the provisions of ss. 23 and 52 of Bengal Act VIII of 1869, s. 503 of the Code would not apply to a suit brought under that Act merely for arrears of rent; yet there was no provision in that Act which excluded the operation of s. 503 when a suit was brought for recovery of the tenure itself. The appointment of a receiver was not the same thing as the cancelment of a lease or the ejectment

(1) *Subramanya v. Appasami*, 6 M. 35, overruled on the question of the right of appeal by *Venkatasami v. Stridarama*, 10 M. 179.

(2) *Madhu v. Sabar*, 14 C. W. N. 681 : 6 I. C. 177.

(3) *Kartick v. Padmanand*, 11 C. 496.



of a lease-holder. The possession of the receiver was not adverse to the lease-holder and could not be pleaded against him in any question of limitation. The possession of the receiver was for the benefit of the parties to the suit. It was therefore held that a receiver of the rents and profits of the tenure might properly be appointed under the provisions of s. 503 of the last Code.

The words "under attachment" in s. 503 of that Code applied to property for the first time attached in execution of any decree.(1)

A zemindari was attached in execution of certain decrees against the zemindar and the plaintiff was appointed receiver with full powers under s. 503 of the last Code to manage the zemindari. Before the appointment of a receiver the zemindar had expended certain sums at the defendant's request to repair a tank for the irrigation of lands held by them in common with him. A suit was brought to recover the sums so expended. It was objected that the receiver could not maintain the suit on the ground that the sum sued for was neither the subject of a suit against the zemindar nor property attached in execution of a decree against him, but it was held the receiver could maintain the suit.(2) A Court can appoint a Receiver for property which has been declared to be in the possession of the defendant under s. 145 Cr. Pr. Code.(3) The right of a person to receive allowance charged on property is attachable but a receiver cannot be appointed to receive money month by month.(4)

§ 9. A receiver may be appointed during the pendency of the litigation of any time before decree. A receiver may under very special circumstances be appointed even before service of writ in the section.(5) The application for a receiver may be made at any stage of the action according as the urgency of the case requires it. Where proceedings are already pending an order for a receiver may be made in those proceedings without

Time when  
Receiver  
may be  
appointed.

(1) See Form 168 in the Fourth Schedule of the last Code.

(2) *Sundaram v. Sankara*, 9 M. 334.

(3) *Shivaji v. Aiswaryananda*, 29 M. L. J. 209 : 29 I. C. 485.

(4) *Padmanand v. Rama Prasad*, 16 C. L. J. 354 : 17 C. W. N. 662 : 17 I. C. 284.

(5) *Kerr*, 154 ; *H. v. H.*, 1 Ch. D., 276 ; *Seton Decr.*, 652.



any fresh suit being instituted. If the appointment of a receiver is a substantial object of the action, the plaint should contain such a prayer, and if it does not, upon amendment, a receiver may be obtained.(1) In making an application on affidavit the latter should contain the facts and not merely follow the words of the Act. "A party cannot swear in the words of an Act of Parliament merely, but must state the facts without stating what the construction of the Act is."(2) A receiver may also be appointed or continued(3) by the decree, or the appointment may be made after the decree;(4) even though it had been previously refused if a state of facts entitling the party to a receiver were made to appear in the proceedings in the cause.(5)

§ 10. Where an order is made that a certain person upon his giving security be appointed receiver, the order appoints the receiver conditionally upon his giving security only and a receiver becomes such on giving security. When he has done that he can take possession. He is not legally clothed with the character of receiver nor able to perform its duties until he has given security, and his recognisances are perfected. The appointment of a receiver so far as it affects the rights of creditors or third parties dates not from the order appointing him, but from the completion of the security required to be given by the order, and accordingly until the appointment has been perfected by certificate, that the security has been completed, a judgment-creditor is not debarred from proceeding to execution.(6)

Time from which appointment takes effect.

(1) Kerr, 151.

(2) *Per Peel*, C. J. In the goods of *Sreemutti Okilmoney Dasse*, Fulton R. 90 (1842).

(3) *Motibahu v. Premvahu*, 16 B. 511, 512; *Mathusri v. Mathusri*, 23 I. A. 28 (permanently); 19 M. 120; *Ex parte Jijai Amba* 13 M. 390 P. C.

(4) *Shunmugam v. Moidin*, 8 M. 229; 233; Kerr, 154. This is now expressly provided for in the present Code: O. 40 r. 1 (1) (a).

(5) *Att.-Gen. v. Mayor of Gallway*, 1 Moll, 95, 104; Kerr, 157.

(6) *Edwards v. Edwards*, L. R. 2 Ch. D. 291, 296. In *Defries v. Creed*, 34 L. J. Ch. 607, it was held

that there was no contempt, possession having been taken after the receiver was nominated, but before he had passed his recognisances and before he had been actually appointed; and see *Ex parte Evans*; *Re Watkins*, 13 Ch. D. 252, 255, High, § 121. A contrary rule generally prevails in the American Courts in which it is held that upon the filing of the bond the receiver's title has relation back to the date of his appointment, and such title has been upheld against creditors levying upon the property between the date of the appointment and the filing of the bond. High, § 121A, and see Beach, § 168.



But if no security is required, which should appear upon the face of the order, the appointment is complete upon possession being taken under the order.(1) When, as will be done in urgent cases, an *interim* receiver is appointed for a limited time without security, he becomes an officer of the Court and is legally clothed with that character from the date of his appointment.(2) The receiver's liability however to account in respect of moneys received and expended by him as receiver at once arises whether the security has been completed or not.(3) As far as respects parties to the action, the rents and profits of the estate over which a receiver has been appointed are bound from the date of the order for the appointment;(4) but the latter does not date back to the date of the application.(5) Though outsiders may not be affected until the completion of the security, the parties to the suit may, before such time, be restrained from touching the property.(6)

§ 11. Except (according to English practice) in the case of managers, there is often no limit of time fixed.(7) When this is the case and the suit is dismissed, the dismissal of the suit will in general operate as a discharge of the receiver. But if the suit is decreed and no limit is fixed in the appointment of a receiver, it is not necessary for the judgment to direct that he be continued.(8) Sometimes the receiver is only appointed until judgment, that is, during the pendency of the suit or until further orders. When this is the case, if he is to continue receiver, the judgment must so direct, and as this is practically a new appointment, further security must be given unless, as is usually the case, the security originally given is made applicable to any continuation of the appointment.(9) A receivership may be con-

Duration  
of Receiver-  
ship

(1) *Morrison v. Skerne Iron Works C.*, 60 L. T. 588. As to forms of appointment, see *Seton*, 750.

(2) *Taylor v. Eckersley*, 2 Ch. D. 302; 5 Ch. D. 741.

(3) *Smart v. Flood*, 49 L. T. 467.

(4) *Lloyd v. Mason*, 2 M. & C. 487; *Codrington v. Johnston*, 1 Beav., 520. See *Wickens v. Townshend*, 1 R. & M. 361; *Re Birt*, 22 Ch. D. 604.

(5) *Re Clarke*, 1898 1 Ch. 339.

(6) See *Defries v. Creed*, 34 L. J. Ch. 607.

(7) *Kerr*, 170.

(8) *Kerr*, 170 *Hiralal v. Loonkaran*, 1962 S. C. 21.

(9) *Ib.*; in *Motivahu v. Premvahu*, 16 B. 511, 512, the receiver who had been previously appointed was continued by the decree.



tinued, although the original reasons for the appointment have been removed, when these causes have produced new ones sufficient to call for an appointment which have not been and cannot be removed.(1) Where two persons were appointed joint receivers to an estate, the order appointing them did not come to an end on the resignation of one of them so as to leave the estate without a receiver and without the protection for which a receiver is, in fact, appointed.(2)

It is within the discretion of a Court appointing a receiver in a suit to order that the office should continue permanently after the decree when such continuance is necessary or for so long as it may be so. A decree of the High Court declared it to be necessary that a permanent appointment should be made of a receiver and manager of the estate allotted by the Government to the family of the deceased Maharajah of Tanjore, and directed that fresh appointments to the receivership should be made from time to time as occasion might require during the life of the senior widow under whose management the estate had been originally placed and the lives of the co-widows surviving her or for so long as the Court might consider necessary. *Held* that the decree directing the permanent receivership was not in variation of the judgment which it purported to follow, that the Court had a discretion to make such an order when necessary for the preservation of the estate; and that so doing was in accordance with the practice; there being nothing to prevent the Court from giving the management to the senior widow living at the time, if she should be fit to manage the estate on behalf of all interested in it.(3)

§ 12. A receiver will not be appointed under the Code unless an action is pending or the property be the subject of attachment. A plaintiff should be filed claiming a receiver, where the obtaining of it is a substantial object of the action, upon or after the filing of the complaint and before or after service of the writ. An application

Mode of  
appointment.

(1) Beach, § 99.

(2) *Eastern Mortgage Co. v. Prem-ananda*, 20 C. W. N. 789 (1916) : 23

C. L. J. 217.

(3) *Mathusri v. Mathusri*, 23 I. A. 28; 19 M. 120, and see *Ex parte Jijai Amba* 13 M. 390 P. C.



for a receiver may be made on motion or on petition.(1) The party applying may either move to obtain a rule *nisi* or serve notice of motion. If the matter be urgent he may apply for an *ad interim* receiver until the hearing of the application, or he may apply for leave to serve short notice of motion. Formerly in England a defendant could not apply for a receiver before decree.(2) But by the Judicature Act and rules and orders thereunder an application for a receiver may be made by any party whether plaintiff or defendant.(3) But the defendant's claim to relief must arise out of the plaintiff's cause of action or be incidental to it. So in an action for dissolution of a partnership and for taking the partnership accounts, it was held that the defendant was entitled to give a cross-notice of motion in the plaintiff's action for the appointment of a receiver.(4) And in a partition-action the defendant was held entitled to move for a receiver for the protection of the property.(5) But if the relief asked by the defendant is not connected with the subject-matter of the plaintiff's claim and relates to nothing that is the issue in the plaintiff's action, but is outside of the action altogether, then the defendant cannot, it has been held, apply without a counter-claim or a new suit.(6) It is submitted that under the Civil Procedure Code the Court possesses the power of appointing a receiver at the instance of the defendant, but that the exercise of such jurisdiction will be limited as above-mentioned. And that, if the relief sought by a defendant is not connected with the subject-matter of the plaint, the defendant must, if he desires a receiver, institute an action of his own for such purpose.

Application for a receiver may be made either *ex parte* or on notice, but it is only in case of emergency that a receiver will be appointed upon an *ex parte* application as where there

---

(1) Under English practice when the application for a receiver is made for the first time in the cause, it must be heard in Court: but if the application is only to supply the place of a receiver already appointed, and whose office has become vacant by death or otherwise, it may be made in Chambers. *Grote v. Bing*, 9 Hare, App. 1, but see next page.

(2) *Robinson v. Hadley*, 11 Beav., 614.

(3) S. 50, 2. 6; (1959) Andh. W. R. 407.

(4) *Sargeant v. Read*, 1 Ch. D. 600.

(5) *Porter v. Lopes*, 7 Ch. D. 358.

(6) *Carter v. Fly*, 1894, 2 Ch. 541, Kerr, 133.



is any risk of the defendant defeating the applicant's object by making away with the property on being served with notice of application for a receiver. The Courts, however, are very averse to the exercise of jurisdiction upon application *ex parte*.<sup>(1)</sup> The motion should properly be founded on affidavits or papers, copies of which should be served with the notice of the application; although, if the papers on which the moving party seeks relief are already in file in the cause, it is sufficient to refer to them in the notice. It is not regarded as necessary or essential to the appointment of a receiver that the facts upon which the application is based should be set forth in the pleadings, but it is sufficient if they are presented to the Court by affidavit upon the hearing of the motion. This follows necessarily from the very nature of the appointment, which is usually treated as an auxiliary proceeding and not the ultimate object of the action. Affidavits upon which the application is based should be distinct and precise in their allegations, so that the defendant may be fully apprised thereof, especially where fraud is one of the grounds relied upon for the interference of the Court. It is not sufficient to allege merely the legal conclusions upon which the plaintiff relies, and the facts must be averred upon which such conclusions are predicated. Nor will it do to allege in general terms that plaintiff is entitled on principles of equity, but the facts relied upon should specifically appear. The Court will not be moved by vague allegations, nor will mere general averments of plaintiff's belief that the property will be wasted or destroyed, warrant the Court in interfering, but the grounds upon which such belief is founded should be set forth.<sup>(2)</sup> Because a plaintiff makes violent and wholesale charges of waste and malversation and upon this basis applies for a receiver, it is not a necessary consequence that such an appointment should be made; there must be acceptable evidence.<sup>(3)</sup> It must be shown that a receiver is necessary for the realization or preservation of the property or for the other objects mentioned in the Code.<sup>(4)</sup> Affidavits may be received and read in answer to the application, and

(1) Kerr, 152, 154; High, § 111.

(2) High, §§ 17, 84, 88, 89; Kerr, 134.

(3) *Prosonnomoyl v. Beni*, 5 A.

556.

(4) *Latafut v. Anant*, 23 C. 517, 520 (case under C. P. Code of 1882).



the Court will then appoint or refuse to appoint a receiver.(1) It is proper on denying a motion for a receiver to give leave to the moving party to renew his motion upon additional proof, if it appears that he may, by obtaining new proof, present a strong case for the relief sought. And it is competent for a plaintiff to ask for and for the Court to appoint a receiver after a hearing and even after a re-hearing and refusal, when an altered state of facts is presented showing an appropriate case for the relief. But when the application has once been before the Court and has been denied, a receiver will not be appointed upon a subsequent application upon a simple notice for that purpose founded upon the same papers as before without affidavits or additional proof showing a necessity for the relief. And this rule holds good even though the Court may have intimated, on the former application, that a receiver might afterwards be granted, if circumstances should warrant the relief. After a receiver has been appointed upon motion, pending an action against defendant, it is proper for the Court to entertain an application to open and rehear the motion for the receiver and to allow the defendant to introduce proofs which could not be produced upon the former hearing.(2) When a receiver has been appointed over a particular subject-matter on behalf of one creditor or a class of creditors, the practice is frequently adopted of extending the same receiver for the protection of other parties interested in the same subject-matter for the purpose of saving the expense of a new appointment; or if appointed over a part only of the defendant's estate, he may be extended over the residue for the benefit of other creditors.(3) Where proceedings are already pending an order for a receiver may be made in those proceedings without any fresh suit being instituted.(4) The appointment is subject to the ordinary rule that equitable relief can only be granted when the proper parties are before the Court.(5) The person whose property it is sought to place in the receiver's hands must be made a party to the suit in order that he may have an opportunity of resisting the application, the granting

(1) As to the selection of the person to be appointed, v. *ante*.

(2) High, §§ 91, 92.

(3) High, § 93.

(4) *Re Peace and Waller*, 24 Ch. D. 407.

(5) *Kerr*, 152.



of which might result in irreparable injury to his interests.(1) An application for the appointment of a receiver on the retirement of another receiver should be made in Court and not in Chambers.(2) Upon making the order the Court either duly appoints a particular person to be receiver or directs a reference to enquire who will be a fit and proper person to be appointed. In the first case if the appointment be without security, it takes effect at once; if subject to security, it takes effect upon the conclusion of the enquiry as to the security to be taken and the filing of the certificate that security has been given. If the Court directs an enquiry as to who is to be appointed, the enquiry is held in the High Court by the Registrar. The party requiring a receiver nominates a particular person. An enquiry is made as to his fitness and as to the security. The Registrar then reports the matter to the Court which, on reading the previous order, appoints him subject to his giving the security settled. As to forms of appointment, see *Appendix*.

§ 13. Every receiver appointed must give such security (if any) as the Court thinks fit duly to account for what he shall receive in respect of the property. Security.

As a general rule security is required, but if, as in exceptional cases, no security is to be given, it should be so stated in the order.(3) Where a person is appointed receiver subject to his giving security, the order is not effective until security is given.(4) The security usually required is the bond of the receiver with two or more sureties.(5) The procedure with regard to the giving of security as it prevails in the High Court is as follows :—On an order being made for the appointment of a receiver subject to his giving security to the satisfaction of the Registrar, the order is drawn up and filed in the Registrar's office. An office copy is then obtained and filed in the Reference and Account Department of the Registrar's office. Upon the office copy being filed, the Registrar issues notice to all parties to appear before him on a day to be fixed and to proceed under the order. The

(1) High, § 17.

(2) *Stalkartt v. Stalkartt*, 28 C. 250.

(3) O. XL, r. 3(a). *Brij Indar v. Jai Indar*, 59 I. A. 311 : 36 C. W. N. 882 : 1932 P. C. 191.

(4) Kerr, 179 : *In re Roundwood Colliery Co.*, 1897, 1 Ch. 373 : High. § 121. *Ridout v. Fowler*, (1904) 1 Ch. 658, 662 ; (1904) 2 Ch. 93. *Srinivas v. Kesho*, 14 C. L. J. 489.

(5) Kerr, 162.



matter comes on as a reference on the day fixed, and the Registrar proceeds to enquire into the amount of assets likely to come to the hands of the receiver and fixes the amount of security to be furnished. In doing this, regard will be had to the nature of the property and the periods at which the receiver is to pass his accounts and pay balances due from him and to the amount of the balances which are likely to remain in his hands before payment. Sometimes the amount of the security may be reduced by deposit of securities in the Imperial Bank endorsed in a non-negotiable form. Security is generally given by bond. The sureties who have been proposed and who must be resident within the jurisdiction are examined, and upon the Registrar being satisfied as to the sufficiency of the sureties, a bond is executed by the receiver and his sureties in favour of the Registrar in the form given in the Appendix. On this being done, the Registrar then certifies to the Judge that security has been furnished, and thereupon the order for appointment of the receiver takes effect.

If a surety becomes insolvent or dies, the receiver will be called upon to furnish fresh security, and a reference is made for that purpose as above-mentioned. If the receiver himself becomes insolvent, his office terminates. Should it become necessary to enforce the bond, it is assigned by the Registrar under order of Court to the party entitled to sue upon it; should the suit be still undetermined at that time, the Court would probably appoint a new receiver with power to sue upon the bond assigned to him. As a general rule no fresh security is required when the receiver is continued by the decree, the order generally directing that he be continued upon the same security. In the case of the appointment of the Court Receiver, no reference is required as that officer gives security upon his entering office in his own bond and that of his sureties who are approved by the Chief Justice. According to English practice where there is evidence of immediate danger to the property, and there is no time for the receiver to complete his security, an *interim* receiver may be appointed without security for a limited period, or until a receiver should be appointed under a reference for that purpose upon the undertaking of the person so appointed *interim* receiver, if he be the plaintiff, not to deal with the property except under the direction of the



Court and to abide by any order which the Court may think fit to make as to damages or otherwise. In other cases where the case is urgent and there is no time for the receiver to complete his security, the party moving the Court must enter into an undertaking as to damages and for the receipts of the receiver; or must undertake that the person so appointed receiver shall give such security as the Court can enforce, that he will preserve intact the property of which he is appointed receiver.(1) Although the author can find no case where this has been done, there seems to be no reason why this course should not be followed, if necessary. In any case the Court might dispense with security, or, in the case of the High Court, appoint the Court Receiver. The Court has, however, where there was great danger to the property, appointed a receiver without security, and directed him to take possession before the order of appointment was formally drawn up. If a receiver is appointed without any direction given as to security, the order takes effect at once, and he is validly in possession though no security has been given. If the appointment is conditional upon the furnishing of security, the giving of security is a condition precedent, and there is no effective appointment till security has been given.(2)

§ 14. The general principle applicable to all judicial proceedings that the property of an order or decree made in a cause in which the Court has jurisdiction, cannot be questioned collaterally, cannot be challenged collaterally, applies with equal force to an order appointing a receiver made by a Court of competent jurisdiction. Thus in an action brought by a receiver for the recovery of property claimed by him by virtue of his receivership, the defendant will not be permitted to question the propriety of his appointment. The appointment of a receiver is not, however, a proceeding *in rem* in the sense that it is binding upon all the world and persons who are not parties to the action are not concluded thereby. If, however, the Court making the order was without jurisdiction, a different rule prevails, and in such case its order may be held void even when questioned in a collateral suit or proceeding.(3)

(1) Kerr, 166, 167.

(2) *Srinivas v. Kesho*, 14 C. L. J. 489 : 12 I. C. 745. Cf. 46 C. 70 *infra*, 13 C. W. N. 654 : 36 C. 713 : 9 C. L. J. 563 : 1 I. C. 356.

(3) High § 39A. *Bhairab v. Nandiram*, 46 C. 70 : 22 C. W. N. 520 : 27 C. L. J. 395 : 43 I. C. 804. See *Poresh v. Omerto*, 17 C. 614, 618.



§ 15. A receiver duly appointed is from the moment of his appointment an officer of the Court and entitled to the possession of the property comprised in the order appointing him. The effect of the appointment is to remove the parties to the action from the possession of the property,(1) subject to this that the Court cannot remove from the possession or custody of property any person whom the parties to the suit or some or one of them have or has not a present right so to remove. The appointment, however, though it may operate to change possession, has no effect itself upon the title to the property in any way and determines no right as between the parties.(2) Receivers and managers are only the custodians of the property of which they take possession. The Court in an action for a receiver deals with the possession only until the right can be determined, if the right be the subject-matter in dispute between the parties or until the incumbrances have been cleared off, if the appointment has been made at the suit of an incumbrancer. The title is in no way prejudiced in theory or principle by the appointment,(3) and remains in those in whom it was vested when the appointment was made.(4) The possession of the Court by its receiver is the possession of all parties to the suit according to their titles : his appointment is not for the benefit of the plaintiff merely but for all other persons who may establish rights in the cause. He is not the particular agent of any party but an officer of the Court.(5) With regard to the limitations in his title, it is to be observed that his possession is subject to all valid and existing liens upon the property at the time of his appointment and does not divest a lien previously acquired in good faith.(6) The rights of the parties to an action are not interfered with by the appointment.(7) It is not adverse to either party.(8) If at the time a receiver is appointed, a party claiming a right in the same subject-matter under a title paramount to that under which the receiver is appointed is in possession of the right which he

Effect of  
appointment.

(1) Kerr, 182  
(2) *Orr v. Muthia*, 17 M. 504 ;  
Beach, § 1.  
(3) Kerr, 177 *et seq.*  
(4) Beach, § 209. The object of  
the appointment is not to divest a  
rightful owner of the title but to

protect the property by taking  
possession ; *ib.*, § 221.

(5) Kerr, *ib.*  
(6) High, § 138 ; Beach, § 202.  
(7) Kerr, 180.  
(8) Beach, § 222.



claims, the appointment of the receiver leaves him in possession.(1) The appointment of a receiver is a matter which does not concern mortgagees or prior incumbrancers, for a receiver in the exercise of his authority will be obliged to respect former orders of the Court; and prior incumbrancers are at liberty to take such proceedings in behalf of their own interests as they may think fit.(2) It has been held by the New York Court of Appeal that where a receiver of the rents and profits only has been appointed, he does not take any title to the property, although entitled to the possession, and so that a transfer of the legal title, whether by grant or under a foreclosure, is not adverse to his possession and is allowable.(3) When property is in the hands of a receiver all orders passed in respect of its management are binding on all who are either actually or constructively parties to the proceedings.(4)

As a general rule, the mere appointment of a receiver to take charge of property in dispute will not suspend the operation of the Statute of Limitations.(5) Where a receiver has been appointed in execution to collect the rents of a property in satisfaction of a decree, the attachments still continuing, the execution-proceedings continue so long as the appointment of the receiver continues, although the execution case is struck off the file.(6) The appointment operates as an injunction against the parties, their agents and persons claiming under them, restraining them from interfering with the possession of the receiver except by permission of the Court.(7) The order does not, however, "create a charge, but it operates as an injunction to restrain the defendant from himself receiving the proceeds of sale."(8) A receiver of land never takes actual possession; he only receives the rent; nor does he receive such rents and profits by virtue of an estate or title vested in him, but he collects the same merely as an officer of

(1) Kerr, 149, 164; *Evelyn v. Lewis*, 3 Ha., 472; *Bryant v. Bull*, 10 Ch. Ch. D., 155.

(2) *Bryant v. Bull*, *supra*. The appointment of a receiver is for the benefit of incumbrancers only so far as expressed to be for their benefit and as they choose to avail themselves of it, Kerr, 153, 154, 156.

(3) *Foster v. Townshend*, 2 Abb.

N. C. 29 45 (Amer.); Beach, § 211.

(4) *Rajagopala v. Jamal*, 90 I. C. 337 : 1925 M. 571 : 21 M. L. W. 312.

(5) Beach §§ 219—220; Kerr, 152.

(6) *Radha Kissor v. Aftab*, 7 C. 61.

(7) *Zohur v. Noor*, 21 C. 91.

(8) *Tyrrell v. Painton*, (1895), 1 Q. B. 206.



the Court upon the title of some persons parties to the action.(1) A rent-decree obtained by a landlord long after his estate passed to the receiver is infructuous. The estate, inclusive of the cause of action in the rent-suit, vested [for specific purposes] in the receiver and thereafter the receiver was the only person competent to prosecute the suit and to obtain a decree against the tenants.(2)

Where a person having obtained a decree for money died before the decree was executed and the administrator of his estate put the decree in execution and then transferred it to a third party who applied to have his name put on the record as decree-holder and to execute the decree, and it was objected that the administrator had no power to make the transfer as the estate was at the time of the transfer vested in a receiver appointed under an order of Court; it was held that if the estate was at the time of the transfer vested in a receiver duly appointed and the decree appertained to the estate, the administrator had apparently no power to transfer the decree.(3)

§ 16. The receiver being the officer of the Court from which he derives his appointment, his possession is exclusively the possession of the Court, the property being regarded as in the custody of the law, *in gremio legis* for the benefit of whoever may be ultimately determined to be entitled thereto. The possession being therefore that of the Court may not be disturbed without the leave of the Court, and any person who disturbs such possession is guilty of a contempt and liable to punishment therefor. No one is entitled to interfere with the possession whether he claims under, or paramount to, the right which the receiver was appointed to protect.(4) But the rule that the possession of a receiver may not be disturbed without leave does not apply so far as third persons are concerned until a receiver has both been appointed and is in possession. It is not enough that there is an order directing appointment.(5)

Possession  
and inter-  
ference with  
possession of  
Receiver.

(1) *Ex parte Evans*, 13 Ch. D., 255; *Vine v. Raleigh*, 24 Ch. D., 243.

(2) *Bhubaneswari v. Ajodhya*, 15 C. L. J. 339 [commented on in *Manmatha v. Saroj*, 1936 C. 639].

(3) *Ganga Das v. Yacoob*, 27 C. 670, 673.

(4) High § 134; Kerr. 199 *et seq*;

*Khan v. Ali*, 16 B. 577, 579; 1958 Punj., 471. See 1958 S. C. 725. Also O. 21 r. 52.

(5) *Kanailal v. Manoo*, 23 C. W. N. 952; *Jagadish v. Bhubaneswar*, 37 C. L. J. 265; *Rebati v. Uma*, 1953 C. 574; 58 C. W. N. 193 (Receiver has to take possession).



Property in the possession of a receiver is in the custody of the law and cannot be seized under a writ of execution.(1) Thus an attachment of money in the hands of the receiver is an interference with the Court's possession and may not, therefore, be made without the Court's leave first obtained.(2) A judgment-creditor cannot without leave proceed to execute his decree by attachment of property in the hands of a receiver. The Court does not permit and will not recognise attachment of the properties in the hands of its receiver, under process issued without sanction or leave, by inferior Courts, the reason being that a proceeding by way of attachment is an interference with the possession of the receiver.(3) The fact that leave had already been granted to the execution-creditor at whose instance property in the hands of a receiver was sold, does not dispense with the necessity of other execution-creditors obtaining such leave to prosecute their applications under s. 73 of the Civil Procedure Code for rateable distribution of the assets; for the funds are held by the Court for the benefit of the receiver who would be entitled as a matter of right to take out any surplus left after satisfying the creditors who have obtained such leave, and apply it for the purpose of the litigation in which he was appointed. Courts have been generally reluctant to allow execution to proceed against properties in the hands of the receiver until leave has expressly been granted for this purpose. A prohibitory order under s. 272 of Act XIV of 1882 (now O. XXI, r. 52) on the receiver cannot be construed as leave granted to the decree-holder to proceed against properties in his hand. In the circumstances of the case the High Court held that the application should not have been dismissed because no such leave had been obtained but that an opportunity should be given to the petitioner even at this late stage to obtain the requisite leave.(4)

(1) *Fraser v. Krishna Svami*, 47 M. 47 : 1923 M. 144 : 43 M. L. J. 211 ; as to receiver being made party to execution proceedings, see *ib.*

(2) *Khan v. Ali*, 16 B. 577 ; *Zohur v. Noor*, 21 C. 85.

(3) *Jogendra v. Debendro*, 26 C. 127, 129 ; *Hem Chunder v. Pran Krishto*, 1 C. 403 ; *Khan v. Ali*, 16 B. 577 ; *Zohur v. Noor*, 21 C. 85. Leave to execute depends on considerations subsequent to initial

uses to sue : *Ranjit v. Samarendra*, 1953 C. 797 ; *Basdeo v. John*, 1953 A. 717 (for another method see O. 21, r. 52). *Thayamana v. Ramasvami*, 1925 M. 51 (Receiver appointed after attachment in other proceedings).

(4) *Sarat v. Apurba*, 15 C. W. N. 925 ; 14 C. L. J. 55 ; (*Banku v. Harendra*, 15 C. W. N. 54—followed. *Pramatha v. Khetra*, 32 C. 270 ; 9 C. W. N. 247—dissented from).



Where it was contended that under the terms of s. 272 of the last Code (now O. XXI r. 52) an attachment is authorised to be made by a notice to the Court in whose custody the property attached was or to the public officer having the custody of the property proposed to be attached, and that a receiver would be in no better position than the Court itself of which he is an officer ; it was held that this argument overlooked an important distinction between the case of property which is in the custody of the Court and that of property in the custody of a receiver appointed by the Court ; that the appointment of a receiver operates as an injunction against the parties, their agents and persons claiming under them restraining them from interfering with the possession of the receiver except by permission of the Court ; that s. 272 was not intended to and did not in fact alter the practice of the Court which is to require that persons attaching property in the hands of the receiver should previously obtain the permission and sanction of this Court and to regard an attachment not so authorised as a breach of the injunction and therefore a contempt of Court.(1) By a decree of the High Court obtained by *D. M.* in November 1871 in a suit on a mortgage brought by him, against *B. C.* and *P. C.*, it was ordered that the suit should be dismissed against *P. C.*, that the amount found due on the mortgage should be paid to *D. M.* by *B. C.*, that the mortgaged property, some of which was in Calcutta and some in the Mofussil, should be sold in default of payment, and any deficiency should be made good by *B. C.* The property in Calcutta was sold under the decree, and did not realize sufficient to satisfy the decree. *D. M.* thereupon, in August 1873, obtained an order for the transfer of the decree to the Mofussil Court for execution : after the transfer *B. C.* died in December 1874, leaving a widow and an adopted son, his representatives, against whom the suit was revived. The decree, however, was returned to the High Court unexecuted. In a suit for partition of the estate of *R. C.* deceased brought by *P. C.* against *B. C.* in the High Court, a decree was made in February 1871, for an injunction to restrain *B. C.* from intermeddling with the estate or the accumulations,

---

(1) *Zohur v. Noor*, 21 C. 85, 91.



and for the appointment of the receiver of the Court as receiver, to whom all parties were to give up quiet possession. *B. C.* was in that suit declared entitled to a moiety of the property in suit. *Held*, on application by *D. M.* to the High Court for an order that the receiver should sell the right, title and interest of the widow and son of *B. C.* in the estate in his hands to satisfy the balance of his debt, that property in the hands of the receiver of the High Court cannot be proceeded against by attachment in the *Mofussil*; and that *D. M.* was entitled to an order that their interest should be attached in the hands of the receiver, and that the receiver should proceed to sell the same.(1)

Prior to the Transfer of Property Act a judgment-creditor, if he had proceeded to execute his decree in the *Mofussil* Court, could have done so only by attachment and sale. Under that Act no attachment is necessary, and the reason for the course adopted in the last-mentioned suit does not now exist as was held in the undermentioned case,(2) in which the facts were as follows:--In this case a receiver had been appointed in a partition-suit in which a decree had been made declaring the rights of the parties and directing the usual accounts and enquiries. During the partition-proceedings and after the appointment of the receiver two of the co-sharers mortgaged their interest in the undivided properties. The mortgagee obtained a decree on his mortgage and sought to bring to sale certain properties which were included in his mortgage, but which were then in the hands of the receiver. A rule was obtained by the judgment-debtors calling on the judgment-creditor to show cause why he should not be restrained from proceeding to a sale of the properties in the hands of the receiver on the ground that to sell the mortgaged properties without the leave or sanction of the Court would amount to contempt of Court. It was, however, held that the sale of the properties under the provisions of the Transfer of Property Act could have no other effect, so far as the possession or control of the receiver was concerned, than a private sale by the mortgagors themselves. To obtain the benefits of his purchase and the rights incident

(1) *Hem Chunder v. Pran Ktrsto*,  
1 C. 403.

(2) *Jogendra v. Debendra*, 26 C.  
127 : 3 C. W. N. 90.



thereto the purchaser would have to seek the intervention of the Court appointing receiver and would be bound by all the proceedings in the partition-suit in such Court. The rule was, therefore, discharged.(1) When a fund, such as the assets of a partnership, is in the hands of the Court through its officer, the receiver, one out of the whole body of creditors against the fund will not be allowed to gain priority over the remainder by the expedient of attaching the moneys in the hands of the receiver. Such an attachment is an interference with the Court's possession through its officer, the receiver, and may not, therefore, be made without the Court's leave first obtained: which leave will not be granted except on such terms as will ensure equality between the creditors:(2) Provided that the order of appointment be a subsisting one it is immaterial, and that is, improper or erroneous. The only course open to those aggrieved by the order is to take the proper course to question its validity, but while it subsists it must be obeyed. The rule is not confined to property in the hands of a receiver, for the Court will not permit any one without its sanction and authority to intercept or prevent payment to the receiver of any property which he has been appointed to receive, although it may not be actually in his hands.(3) It is immaterial whether the interference is done by the consent or permission of the receiver, or by compulsory process against him.(4) In order, however, to constitute a disturbance it is necessary, as already stated, so far at least as third parties are concerned, that the appointment of the receiver should have been perfected and the receiver actually in possession.(5) A receiver is an officer of the Court and the possession by him is the possession of the Court and to bring

(1) *Jogendra v. Debendra*, 26 C. 127: 3 C. W. N. 90.

(2) *Khan v. Ali*, 16 B. 577.

(3) *Kerr*, 201. If the order is wrong, the Court, by which it is made, should be applied to set it right. *Searle v. Chout*, 25 Ch. D., 724. *Ex parte Day*, 48 L. T. 912.

(4) *De Winton v. Mayor of Brecon*, 28 Beav., 200, 202.

(5) *Kerr*, 202; v. ante; it does

not appear in the cases cited whether the parties interfering had knowledge of the order. *Qu.* where a third party has such knowledge and interferes to violate it before its completion; see *High*, § 166; *Beach*, § 245: *Hull v. Thomson*, 3 Edw. Ch. 236; *Skip v. Harwood*, *Atk.* 564; and see the same doctrine discussed as to injunctions in *McNeil v. Garratt*, *Cr. & Ph.* 98.



a suit so as to interfere with the possession of the Court without the leave of the Court is a contempt of Court. But if a party is guilty of contempt of Court, the proper way for the receiver to act is to bring it immediately to the notice of the Court so that proper steps may be taken against the party guilty of contempt; and, in a proper case the Court would grant a party leave to proceed with the suit. But it is not proper for the receiver to wait till the day of hearing and put this objection forward as a ground for dismissing the suit. Where by consent, in a partition-suit, two of the parties were made receivers of different portions of the property with full powers under s. 503 of Act XIV of 1882 : *Held* that each of the receivers had power to bring and defend suits, and a suit by one against the other without leave specially obtained from Court did not amount to such a grave and serious contempt of Court by the plaintiff as to merit dismissal.(1)

The right of a stranger in possession to continue in possession is not affected by the order appointing a receiver but the fact of his possession does not give him the privilege to interfere with the receiver directed to take possession of the property. His proper course is to apply to the Court for the redress of his grievance. If he interferes with the receiver, he does so at his peril. The Court will not permit a receiver appointed by its authority to be interfered with or dispossessed of the property he is directed to receive, by any one, although the order appointing him may be perfectly erroneous. The Court requires and insists that application should be made to the Court for permission to take possession of any property of which the receiver either has taken possession or is directed to take possession.(2)

Though the Court can appoint receivers over property out of the jurisdiction, the receiver is not put in possession of foreign property by the mere order of the Court; something else has to be done, and until what is necessary has been done in accordance with foreign law, any person, not a party to

(1) *Satya v. Satya*, 18 C. W. N. 546 : 19 C. L. 191 : (*Pramatha v. Khettra*, 32 C. 270 : 9 C. W. N. 247, referred to).

(2) In the matter of (a receiver)

*P. Roy Chaudhuri v. Nalin*, 18 C. W. N. 289 : 22 I. C. 417 : *Ames v. The Trustees of the Birkenhead Docks*, 20 Beav. Rep., 353 (1856) followed.



the suit, who takes proceedings in a foreign country is not guilty of contempt either on the ground of interfering with the receiver's possession or otherwise, and for this purpose no distinction can be drawn between a foreigner and a British subject.(1)

In this case the Court observed: "It is not altogether easy to ascertain the origin, nature, and extent of the powers of a receiver. A receiver is an officer of the Court, and the Court does not allow the possession of its officer to be interfered with without its leave. When the Court appoints a receiver it requires the parties to the action to give up possession to the receiver of all property comprised in the order, and treats them as guilty of contempt if they refuse to do so. The Court will grant a receiver a writ of possession (O. XLVII, r. 2), or a writ of assistance [*Wyman v. Knight*(2)] to enable him to recover possession, and it will order tenants to attorn to the receiver. So long as the property is within the territorial jurisdiction of the Court, there is no difficulty, at least in theory, in putting the receiver in actual possession. And when the receiver is in possession the Court does not allow his possession to be interfered with without leave. For example, no judgment-creditor of the company would be allowed to levy execution upon the property of the Company in England now in the possession of the receivers. It is well settled that the Court can appoint receivers over property out of the jurisdiction. This power, I apprehend, is based upon the doctrine that the Court acts *in personam*. The Court does not, and cannot, attempt by its order to put its own officer in possession of foreign property, but it treats as guilty of contempt any party to the action in which the order is made, who prevents the necessary steps being taken to enable its officer to take possession according to the laws of the foreign country. See *Keys v. Keys*(3) where special directions were given to a receiver as to the best mode of getting in an Indian debt, and *Smith v. Smith*,(4) where it was pointed out that a receiver of property in Jersey and in France would have to recover possession according to the laws of those countries ;

---

(1) In *re Maudslay, Sons and Field*; *Maudslay v. Maudslay, Sons and Field* (1900), L. R. 1 Ch. 602.

(2) (1888), 39 Ch. D. 165.

(3) (1839), 1 Beav., 425.

(4) (1853), 10 Hare, App. lxxi.



and in *Houlditch v. Marquis of Donegal*(1) the House of Lords held that the Court of Chancery in Ireland ought to appoint a receiver in a suit instituted to carry into effect a decree of the Court of Chancery in England by which a receiver had been appointed over estates in Ireland. In other words, the receiver is not put in possession of foreign property by the mere order of the Court. Something else has to be done, and until that has been done in accordance with the foreign law, any person, not a party to the suit, who takes proceedings in the foreign country is not guilty of a contempt either on the ground of interfering with the receiver's possession or otherwise. For this purpose no distinction can be drawn between a foreigner and a British subject. I have not been able to find any authority in which this precise point has been discussed but on general principles. I think I should not be justified in holding that the claimants by taking proceedings in Paris were in any way guilty of a contempt of Court. If, however, I am wrong in this view, and there has been a contempt, it seems to me that I ought to allow the claimants to proceed, notwithstanding the appointment of a receiver. It cannot be reasonable that I should deprive English creditors of a right against French assets which French creditors undoubtedly enjoy."(2)

But while the order does not affect third parties until the appointment is completed and perfected where a defendant was present in Court during the hearing of a cause and knew that an order granting a receiver of his estates had been allowed, although the decree itself had not been drawn up, he was held guilty of contempt by removing a portion of the property and so putting it beyond the receiver's possession for the purpose of evading the decree, and it was held that he could not justify himself upon the ground that the decree had not yet been entered.(3) Nextly, it is necessary that the order states so distinctly on the face of it, over what property the receiver is appointed, that it may be known what

(1) (1834), 8 Bligh (N. S.), 344 ; 37 R. R. 181.

(2) In *re Maudslay, Sons and Field* ; *Maudslay v. Maudslay, Sons and Field* (1900) 1 Ch. 602.

(3) *Skip v. Harwood*, 3 Atk., 564 ;

Lord Hardwicke saying, "there are several instances of this kind, or otherwise it would be extremely easy to elude decrees, some of which in their nature require a considerable length of time before they can be completely drawn up.



is the property that he is in possession of.(1) It is not, however, necessary that the party complained of should be about to turn the receiver out of possession; he will not be allowed to take the first steps in an action of ejectment without leave.(2) Where the estate over which the receiver has been appointed has determined, possession may be taken without application to the Court. So where a receiver has been appointed over the estate of a tenant for life, the remainder-man has a right, immediately on the death of the tenant for life, to go into possession without making any application to the Court.(3)

As a general rule, the appointment of more than one receiver whether by the same or a different Court, except in case of joint receivers, is not allowable. Two receivers cannot both have separate titles to, and possession of, the same property, each being appointed in a distinct and independent proceeding and both having by the terms of their appointment, entire control over the assets of the defendant. In case of such conflicting appointments, the Courts will enquire into and determine upon the priority of appointment and, if necessary, will take into consideration fractions of a day. The question which of the several receivers first obtains actual possession of the assets will not enter into the determination of the matter. Where the decision of the Court is in favour of the receiver first appointed, it will order the second one to surrender to him the assets of which he may have obtained possession.(4) Where a receiver has been appointed without prejudice to the rights of any prior incumbrancer, and a prior incumbrancer has taken possession, he may enforce his rights whatever they are without being guilty of contempt.(5) It has been already observed that even those claiming paramount to the right which the receiver was appointed to protect must obtain the

(1) *Crow v. Wood*, 13 Beav., 271; Kerr, 162.

(2) Kerr, 203.

(3) Kerr, 203.

(4) *Beach*, § 232; *Searle v. Chout*, 25 Ch. D., 724. "It is quite clear that I cannot appoint two receivers to be appointed to the same property," per Bacon. V. C., as to the

Court's exercise of its powers in respect of contempt in such cases, see *High*, § 173: and see *Ward v. Swift*, 6 Ha., 312: *Ex parte Cochran*, 20 Eq., 282. *Sridhar v. Mugniram*, 3 P. 357: *All. Bank v. Rajaram*, 1933 L. 671.

(5) *Underhay v. Read*, 20 Q. B. D. 209.



leave of the Court to enforce the right. If at the time a receiver is appointed a party claiming a right in the same subject-matter *is in possession* of the right which he claims, the appointment of the receiver leaves him in possession of the right and does not interfere with the exercise of it.(1) If, on the other hand, the claimant is *out of possession*, he must apply to the Court before he institutes any legal proceedings affecting the possession which the receiver has acquired,(2) even where the receiver has been appointed without prejudice to the rights of persons having prior charges.(3) So, too, where a receiver has been appointed over the estate of a tenant in possession, though the appointment does not affect the rights of the landlord, the latter will not be permitted to exercise those rights, as for example, the right of distraint, without first obtaining the leave of the Court(4).

Parties whose rights are interfered with by having a receiver put in their way may, on making a proper application to the Court, obtain all that they may justly require. The Court has the power and will always take care to give a party who applies in a regular manner for the protection of his rights, the means of obtaining justice, and will even assist him in asserting that right and having the benefit of it. Thus where a receiver has been appointed in a partnership action, a creditor who is in a position to levy execution against the assets of the firm may apply to the Court for leave to do so, notwithstanding the appointment of a receiver, and on such application either leave will be given or an order will be made directing the receiver to pay so as to avoid a sale by the Sheriff.(5)

The course of a party who claims a right paramount to that of the receiver, or rather to that of the party obtaining the receiver, is either to apply on notice in the action in which the receiver was appointed and to come in and be examined *pro interesse suo*, or to apply for leave to proceed by action not-

(1) *Evelyn v. Lewis*, 3 Ha., 472 ;  
*Wells v. Kelpin*, 18 Eq., 298 ;  
*Underhay v. Read*, 20 Q. B. D. 209 ;  
 Kerr, 164.

(2) *Evelyn v. Lewis*, *supra* 475 ;  
 Kerr, 164, 159.

(3) *Bryan v. Cormick*, 1 Cox, 422 ;

*Langton v. Langton*, 7 D. M. & G.,  
 30 ; Kerr, 165.

(4) *Sutton v. Rees*, 9 Jur. M. S.,  
 456 ; Kerr, 205 ; see as to distraint  
*ib.*, 209.

(5) Kerr, 205, 206.



withstanding the receiver's possession.(1) The application in the suit is usually framed in the alternative that the receiver do accede to the plaintiff's demand or that the latter may be allowed to proceed.(2) In most instances a party aggrieved may have ample relief by application on motion to the Court appointing the receiver. In most cases of claims against a receiver the remedy by motion is adequate, and any person having such a claim may resort to this summary remedy. The more common practice and that which has been generally commended by the Courts is to hear and determine all rights of action and demands against a receiver by petition in the cause in which he was appointed without remitting the parties to a new and independent suit. And it rests wholly within the discretion of the Court to grant leave to bring an independent action against its receiver, or to determine the controversy upon petition in the original cause. And it is proper for the Court when application is made for leave to sue its receiver to investigate the subject-matter of the petition and if it appears that the case is free from difficulty or that it involves no question which must necessarily be determined by an action-at-law, the Court may itself determine the matter on petition.(3) If the Court on examining the title is satisfied that the right of the claimant is clear, it will at once decide the matter in his favour, without directing an enquiry, or it may direct an enquiry, or give the claimant leave to sue.(4) In other cases of contest and complexity and if there is a doubtful question and the question to be tried is a pure matter of title, the Court will give the claimant leave to sue, taking care, however, to protect the possession by giving proper directions.(5) When a claim of title and

---

(1) Kerr, 206 ; as to form of notice of motion or summons for examination *pro interesse suo*, see Dan. Ch. Forms. 1698. With respect to the practice on examination *pro interesse suo*, see *Brooks v. Greathead*, 1 J. & W. 179 ; *Hamlyn v. Lee*, 1 Dick, 94 ; *Gomme v. West*, 2 Dick, 472 ; *Hunt v. Prist*, b., 540 ; *Anon*, 6 Ves., 287. The effect of such an examination may generally be obtained on motion or petition when a reference to inquire into the claim will, if requisite, be ordered. *Walker v. Bell*, 2 Mad.21 ;

*Dixon v. Smith*, 1 Swan, 457 ; *Dickinson v. Smith*, 4 Mad. 177 ; Dan. Ch. Pr. 921. 1696 ; *Bissessuree Devia v. Sookram Das Mohunt*, 15 W. R. 347 (1871) appears to have been a case of this kind but the report is so meagre that it is not clear why the application was refused. See also 1956 P. 233.

(2) Ker, 207.

(3) High, §§ 254, 254B.

(4) Kerr, 209 and *v. ante*.

(5) *Empringham v. Shortt*, 3 Ha. 470 ; Kerr, 212. 1959 P. 582.



possession is made by third parties the Court before directing a receiver to take possession should make an enquiry and such enquiry cannot be delegated to the receiver himself.(1) In this country the remedy by suit is as often, if not more frequently, employed than the other, but wherever relief may be obtained by application in the suit in which the receiver was appointed an independent action should not be brought.(2)

The undermentioned suit was a case in which persons, not parties to a suit in which a receiver had been appointed, were permitted to apply, by motion on notice in the suit for the purpose of establishing their rights to obtain an order directing the receiver to make over to them certain properties of which he was holding possession after expiry of the lease under which those properties had been held by him, and which had been granted to his predecessor in title by certain persons through whom the applicants claimed as representatives.(3)

This was appeal from an order made in the Original Civil jurisdiction of the High Court. The suit, in which the order referred to was made, was an administration-suit brought by a daughter to administer her father's estate; in such suit, in the year 1881, the receiver of the Court was appointed receiver, and as such, he took possession of certain taluks and zemindaries situate in or about Purneah, more than half of which were alleged to have belonged to the father, Mahomed Tuckee whilst the remainder was formerly held by Mahomed Tuckee in the name of his son under a lease from certain Persian zeminders, which ran from the year 1865 to the year 1885. The rents of this portion of the property so held under lease were duly collected by the said receiver, and credited to the estate, he paying to certain persons who claimed to be the heirs of the Persian zemindars the yearly rental thereof until the expiry of the said lease, at which period the original lessors or their representatives became entitled to possession of the land formerly held under lease. In December 1887, two persons,

(1) *Hamida v. Jamila*, 34 C. L. J. 123 : 65 I. C. 837 : 1921 C. 298.

(2) *Searle v. Chout*, 25 Ch. D. 723.

(3) *Mahomed Mehdi v. Zoharra*,

17 C. 285 ; *Neate v. Pink*, 15 Sim., 450, as explained by Fry, J., in *Brocklebank v. East London Railway Company*, L. R. 12 Ch. D. 839, referred to.



named Mirza Mahomed Moosavee and Hadjee Mirza Mahomed Ali Savjee, produced to the said receiver a power-of-attorney, alleged to have been executed in their favour by the original lessor or their representatives authorizing the donees of the power to take over possession of the properties formerly held by the receiver under the said lease. This power, and another similarly presented, were both found by the receiver to be insufficient for the purpose, and subsequently in October 1887, a further power was obtained by the two persons aforesaid, and a fresh application was made to the said receiver for possession of the said lands. The receiver, however, declined to make over possession until the applicants proved, to the satisfaction of the Court, the fact that the donees of the power-of-attorney were either the original lessors or their representatives in interest, and until the Court should make an order directing him so to make over possession. Mirza Mahomed Moosavee and Hadjee Mirza Mahomed Ali Savjee (hereafter called the applicants) thereupon applied to the Court, on notice in the administration-suit abovementioned, for an order that the receiver should deliver possession to the applicants of the said lands together with all papers, etc., connected therewith, and should pay to the said applicants all rents and profits of the said lands, less collection-charges, accruing since the year 1885. This application was supported by affidavit setting out the various devolutions and transfers of title from the original grantors of the said lease to the donees of the said power-of-attorney. The application was opposed by one Nathmal Golecha (who was the purchaser of the interests of all the parties to the suit other than those of the infant defendants), and certain of the infant defendants who had not parted with their shares in the estate in the hands of the receiver. Mr. Justice Norris dismissed the application on the ground that the applicants were not parties to the administration-suit, and that the Court had no jurisdiction in the matter. The applicants appealed.

The Appeal Court (Pigot, J.), observed as follows :—"We think the case of *Neate v. Pink*,<sup>(1)</sup> as it stands and as explained by Mr. Justice Fry in the case of *Brocklebank v. East London Railway Company*<sup>(2)</sup> shows that it is proper for, and perhaps

(1) 15 Sim., 450.

(2) L. R. 12 Ch. D. 839.



absolutely incumbent on, this Court to make an order for an enquiry in these proceedings. It is not necessary for us to dwell upon the principle enforced in those two cases. It is clear that *whatever is the least expensive course, consistent with a satisfactory enquiry, ought to be adopted*, in order that the Court shall not, by its own dominant power, hold property on which the parties to the suit have no claim, and hold it in despite of the real owners. If the Court can find out who the real owners are, it should do so, and in the least expensive manner. Mr. Justice Norris' order must be set aside, and in its place we order an inquiry to be held as to the rights of the applicants or such other persons as may be entitled by assignment or inheritance to the interest of the lessors (naming them) under the lease under which Mahomed Tuckee had a share in the property in question. This enquiry will be held by the Judge on the Original Side himself, or by such officer as he may send it to and in such manner as he may direct." (1)

It has been held in the case referred to by the last decision that a person who is not a party to the action is not entitled to apply by motion for payment of money to him by a receiver appointed in the action, even though his claim is made in respect of a debt properly payable out of the funds in the receiver's hands. (2) But in this case the applicants were held to have no specific right in the funds in Court, and it was held that their claim was not against the receiver in any proper sense, but against the Company over whose property the receiver was appointed in respect of a judgment which had been recovered against them subsequent to the appointment of the receiver.

An agreement which would interfere with the work of a receiver appointed by a Court should not be enforced as being opposed to public policy. (3)

§ 17. It would be inconsistent with the main purpose of a receivership—to preserve property in controversy *pendente lite*—which devolves upon the Court the duty of protecting its possession, as well as incompatible with the dignity and authority of the Court, to allow its officer

Suits and applications against Receiver.

(1) *Mahomed Mehdi v. Zoharra*, 17 C. 285, 287, 288 (Followed in *Hudson v. Morgan*, 36 C. 713: 13 C. W. N. 654: 9 C. L. J. 563).

(2) *Brocklebank v. East London Railway Co.*, L. R. 12 Ch. D. 839.

(3) *Fuzhur v. Anath*, 16 C. W. N. 114: 11 I. C. 436.



to be summoned before any tribunal in respect to the property in his hands, at the will of any and every person who has, or imagines he has a just cause of action, or who, for sinister purposes, might institute a fictitious suit against him. On the other hand, to deny to those having just causes of action or claims which call for the adjudication of Courts of law or equity, all opportunity for investigation and all right to a proper remedy, simply because the property to which they must look for reparation, has been seized by the Court and is in its keeping, would violate the fundamental principles of personal rights. The difficulty thus presented has been overcome by requiring all those who desire to bring suit against a receiver first to obtain leave to do so from the Court which appointed him. Leave of the Court is necessary in order that by impleading the Receiver the estate may be bound.(1) The Courts usually grant such leave unless it appears clearly from the application of the claimant that his demand has no legal foundation ; the petition should, therefore, show a probable cause of action—one demanding adjudication by proceedings in Court.(2) The appointment of a receiver does not of itself debar a creditor of the person over whose estate the receiver has been appointed from suing for his claim provided that such suit does not in any way interfere with the possession or jurisdiction of the Court appointing the receiver. But where property in the hand of the receiver is intended to be affected by the result of the litigation the receiver is a proper and necessary party to such suit by way of addition to and not in substitution for the parties primarily responsible. Where during the pendency of a suit for rent under the Bengal Tenancy Act, a receiver was appointed in respect of the entire property of the defendants by another Court and the property for which the rent was claimed vested in him, *held*—that the receiver was a necessary party to the suit and if he was not added with the permission of the Court which appointed him, the suit was liable to be dismissed. Where the plaintiffs

---

(1) *Mahrana v. David*, 21 A. L. J. 737 : 46 A. 16 : 1924 A. 40.

(2) *Beach*, § 652 ; *Miller v. Ram Ranjan*, 10 C. 1014 [a receiver cannot be sued except with the permission of the Court] ; *Kerr*, 199 *et seq.* It is not the course of the Court unless it is perfectly clear

that there is no foundation for the claim to refuse liberty in any case to try a right which is claimed against its receiver. *Randfield v. Randfield*, 3 DeG. F. & J. 766 ; but the applicant should show a probable ground of recovery. *High*, § 254.



refused to add the receiver as a party with leave of the Court appointing him although they had notice of such appointment, *held*—that the Court was not bound nor was it competent to it to add the receiver as a party of its own motion under s. 32, Civil Procedure Code, as the leave of the Court appointing the receiver was essential. But as the point raised was of some novelty and as a fresh suit by the plaintiffs might be barred by limitation the High Court allowed the plaintiffs an opportunity of continuing the suit by taking steps to make the receiver a party upon their paying all costs.(1) If a receiver, duly appointed and in possession of the property in controversy, be sued without the leave of the Court appointing him first obtained the parties who bring the suit may be subjected to proceedings in contempt of Court and punished accordingly. The proceedings in a suit so brought will generally be restrained by injunction, or stayed or set aside on motion. Whether the party proceeding at law did or did not know that a receiver has been appointed over the property or however clear his right may be, the Court will restrain the prosecution of the claim if it be instituted without leave.(2) It has even been held that the consent of the Court to an action against a receiver is a condition precedent to the right to sue and cannot be rectified by a subsequent application for permission to continue the action brought without such permission.(3) More recently this view has been dissented from, it being held that where a suit has been instituted against a receiver without previously obtaining the leave of the Court which appointed him, it is open to the Court to stay proceedings for a reasonable time so as to enable the plaintiff to apply for leave to proceed with the suit. The consent of the Court which appointed the receiver is not a condition precedent to the right to bring an action against the receiver. Where property in the hands of a receiver is intended to be affected by the result of the litigation, the receiver is a proper and necessary party to such a suit.(4) So also where leave

(1) *Jotindro v. Sarfaraz*, 14 C. W. N. 653 : 6 I. C. 214.

(2) *Beach*, § 653 ; *Kerr*, 158, 172. see *Blair v. Maidstone Palau of Vaneties*, 2 Ch. D. 1909, p. 283.

(3) *Pramatha v. Khettra*, 9 C. W. N. 247 : 32 C. 270, *sed qu.*

(4) *Banku v. Harendra*, 15 C. W.

N. 54 : 8 I. C. 1. (*Pramatha v. Khettra*, 32 C. 270 : 9 C. W. N. 247, dissented from) ; *Rustomjee v. Gaebele*, 46 C. 352 ; *Jamsedji v. Hussein*, 22 Bom. L. R. 319 ; *Jagana v. Atchana*, 42 M. L. J. 339 : 70 I. C. 759 (in which for the original receiver the heirs of the party had been substituted).



was obtained to proceed against the receiver after the application for execution had been prevented and before the Court was called upon to make a rateable distribution of the assets : it was held that the subsequent grant of leave validated the application.(1) It has been held that the effect of Madras Act VIII of 1865 is to give a statutory right of suit against a receiver under s. 85 of the Act and that no leave of Court is necessary.(2)

A receiver appointed by the High Court is not the "owner" of the property of which he has been appointed receiver, within the meaning of s. 3, cl. (32), of Bengal Act III of 1899 ; nor can he be made a party to any suit or proceeding without the leave of the Court appointing him.(3) He cannot be made a party to a proceeding under s. 145 of the Criminal Procedure Code, merely in his capacity of receiver and a Magistrate has no jurisdiction to interfere with him in respect of his possession of the estate without the sanction of the Court, his possession being the possession of the Court.(4)

When a party feels aggrieved at the conduct of a receiver, he should seek redress against the receiver in the proceeding in which he was appointed. If separate proceeding be taken against him, either in the Court or elsewhere, they should be with the leave of the Court under whose authority the receiver was acting.(5) It rests in the discretion of the Court to allow a party claiming rights against its receiver, to bring an independent action against him, or to compel such party to proceed against him by petition in the action in which he is receiver.(6) When a Court is asked to give leave to sue its

(1) *Maharaja of Burdwan v. Apurba*, 14 C. L. J. 50 : 10 I. C. 527.

(2) *Kuppuswamy v. Suppan*, 30 M. 505 : 17 M. L. J. 483.

(3) *Fink v. Corporation of Calcutta*, 30 C. 721 : 7 C. W. N. 706.

(4) *Dunne v. Chundra Kissore*, 30 C. 593 : 7 C. W. N. 390.

(5) *Kamatchi v. Sundaram*, 26 M. 492.

(6) Beach, §§ 654, 709 ; High. §§ 254, 254B, 255 ; it is common practice instead of asking leave to bring action to intervene in the original suit by petition, and some cases are more conveniently so tried

than by separate action. Beach, § 654. In the suit of *Suttya Sunkur v. Golap Money*, an application was made (3 Sept. 1900, Cor. Ameer Ali, J.) for an order that the receiver who had put up property of the parties for lease and who had subsequently refused to grant a lease to the highest bidder should grant a lease to the applicant or return his deposit money or be discharged as to 16/35th share of applicant. In the affidavits filed against the application objection was taken that the matter was properly one for a suit, but the objection was not pressed at the hearing and the Court disposed of the application.



receiver it may, and usually must examine into the merits of the claim to ascertain whether a suit is necessary or proper for its adjudication, but such examination and the order made upon it cannot be used by either party as in any way affecting the merits of the case. The order simply permits a judicial investigation to be made; the examination is not itself a trial nor is the decision an adjudication upon the merits.(1) While the Courts which hold property by their officers, the receivers, are in general zealous in protecting them from unauthorized suits, they will not shield them against action for property of which they are not authorized or directed to take possession by the decree of the Court.(2) The Court in which the suit is filed cannot injunct the receiver, nor can a decree be enforced in execution.(2a) As the granting of leave to sue a receiver is practically only the permission of the Court that claims against him may be investigated and determined by legal methods in a competent tribunal, and as such permission does not affect the right of the claimant in proper cases, to join as defendants, the owner of the property in his keeping or other parties, it follows that notice of the application for leave to sue a receiver need not necessarily be given to the parties in the original suit but that notice to the receiver is sufficient to enable the Court to make a valid order. Accordingly it has been held that an order granting leave to sue was sufficient when made upon notice to the receiver alone.(3) A receiver appointed by Court is a public officer holding lands in attachment under the orders of Civil Court within the meaning of s. 85 of the Madras Rent Recovery Act. The effect of that section is to give a statutory right of suit against the receiver and no leave of the Court is necessary before instituting suits against him.(4) No leave is required to sue a discharged receiver,(5) as he is no longer an officer of the Court.

(1) Beach, § 657.

(2) Beach, § 660: thus if the receiver is a mere trespasser he may be sued notwithstanding permission was not first obtained. In *re Young*, 7 Fed. Rep. 855 (Amer).

(2a) *Jugal v. Deva*, 7 P. 684.

(3) Beach, § 662.

(4) *Kuppuswami v. Suppan*, 30 M. 505: 17 M. L. J. 483.

(5) *Dinshaw v. Amrit*, 10 P. 379; *Balai v. Pramatha*, 1959 C. 71.



Generally a receiver cannot be held personally liable in action brought against him in his official capacity, the judgment being entered only so as to affect the funds in his hands.(1) An action cannot be brought against a receiver by a person at whose instance he was appointed.(2) If a special case be made out, the Court will allow a party to continue an action notwithstanding that it has been commenced without leave.(3)

It has been held in England that an acknowledgment by a receiver will renew the period of limitation if he may, under the circumstances of the case, be treated as the agent of the debtor. (4) In the undermentioned case the plaintiff sued to recover money due upon an adjustment of account. *A* and *B* had been appointed joint receivers of the estate of the defendants, and while such receivers had entered into the loan transactions, the subject-matter of the adjustment, one of the receivers only adjusted and signed the account. The suit would have been barred but for this adjustment. It was contended by the defendants referring to ss. 19, 21 of the Limitation Act that one receiver could not acknowledge and had no authority to adjust the account: that where a joint power was given, it must be exercised jointly and that both receivers had taken possession and managed jointly and both had borrowed. It was, however, held that s. 21 had no application; that a manager of a business appointed by the Court stood on a different footing from joint contractors referred to in s. 21 and that the acknowledgment was binding.(5)

*Semble.* That for a suit upon promissory notes and an equitable mortgage made by the executors of a deceased person

(1) Beach, §§ 715, 718.

(2) Kerr, 216.

(3) Kerr, 209: *Gower v. Bennett*, 9 L. T., 310; see *Aston v. Heron*, 2 M. & K., 397. If an action has been brought or the possession interfered with without leave, the order restraining these acts will also give leave or direct that the party be examined *pro interesse suo*; *Johnes v. Claughton*, Jac., 573; as to whether leave to sue is jurisdictional see High, § 254A.

(4) *Toft v. Stephenson*, 1 DeG. M. & G., 28, 41. *Mitra's Limitation*, 3rd Ed., 302: as to part-payment see

*Lelley v. Ford*, 3 C. W. N. cclxxxii (1899); but see also Beach, § 220; *Whitely v. Lowe*, 2 DeG. & J., 704; affirming S. C. 25 Beav., 421.

(5) *Megraj v. Rungo Lall Lohhea*, Suit 304 of 1896, Cal H. C. Cor., Sale J., 23rd March, 1900. As to this case it may be observed that there may be cases where s. 21 would not apply as where the contract had been made by the party previous to the appointment of the receiver, but in this case the receivers were themselves the contractors.



whose estate (including the property subject to mortgage) was subsequently placed in the hands of a receiver, leave is not necessary. It might be urged that though the suit was not brought directly against the receiver, leave was necessary as the suit was against parties over whose property a receiver had been appointed, such receiver being in possession of the mortgaged premises. But it is submitted (and the Court appeared to be of such opinion) that leave was unnecessary. Since the receiver's possession would not be affected until a decree for sale was made and the purchaser took possession which might never occur, for the executors might discharge the debt out of other assets in their hands. If, however, a decree for sale was made, an application might subsequently be made for leave to take possession.(1)

An application for leave to sue a receiver may be made *ex parte* at the time of presenting the plaint and not in the suit in which the receiver has been appointed or on notice to the parties ; (2) though it would appear that the latter course of applying in the suit has sometimes been followed.(3) Any order declaring that leave to sue is not necessary will not bind the parties who are not present.(4)

[The receiver is not a necessary party to every suit concerning the property(4a)]. In the undermentioned case it was apparently held that the receiver was not a necessary party to a suit for possession of immovable property.(5) This was an application by one Srinath Biswas and others for leave to sue the receiver. The petition stated that the petitioners were the absolute owners and had been in possession as *howladars* of a piece of land known as *Kismut Samantogati* in the District of Khulna ; that some time ago that land had diluviated and formed as accretion to a piece of *chur* land known as *Churdukutia* belonging to the Government, that under a settlement from the Government the receiver appointed in the above suit had been holding the said re-formed land and was in possession of the same. The petitioners

(1) *Chartered Bank v. Hurish*, 5 C. W. N. xv (1897).

(2) *Ib.*

(3) See *Suttya Sankur v. Golapmoni*, 5 C. W. N. 27.

(4) *Chartered Bank v. Hurish*, *supra*.

(4a) 1945 C. 387, 392. *Cf.* 1946 C. 127.

(5) *Suttya v. Golapmoni*, 5 C. W. N. 27 ; the case is very briefly reported and no grounds of decision are stated. [Note that a receiver can be added in execution but not substituted for beneficial owner : (1956) 1 C. 171].



then stated that they were desirous of bringing a suit in the Court of the Sub-Judge at Khulna against the parties who were in possession of the said land, as also against the receiver for recovery of possession of the land as re-formation on its own original site, and they prayed for leave to bring a suit against the receiver appointed in the above suit. The Court refused the application, being of opinion that the receiver appointed in the suit was not a necessary party to the suit to be instituted in the Court of the Subordinate Judge at Khulna, but acceded to an application by the petitioners that the expression of the Court's opinion might be embodied in the order dismissing the application so that the plaint might not be rejected by the lower Court. In a note to this case, it is stated that it was followed in the case of *Sarala Dassi v. Bhubon Mohan Neogi* (Suits Nos. 175 and 206 of 1899) before Sale, J., on the 18th August, 1897, when his Lordship in dismissing the application for leave to sue the receiver observed : "If there is any question between the parties entitled to property in the hands of a receiver, a decree in a suit between the parties can always be carried out against such property, or any share therein, without making the receiver a party to the suit."

When the Court orders a receiver to enter into a contract the contract is made with the Court, the approval by the Judge of the offer made by the third party constituting the contract. Such party may apply on summons that the contract may be given effect to. It is not necessary that in order to enforce his right, he should institute a suit. A Court has complete power to enforce summarily a contract made by it when managing or administering an estate, whatever that contract may be. Such power of enforcing subsisting contracts made by it is not affected by the fact that the Court has ceased to manage the estate before such contract is carried out by reason of the dismissal of the suit.(1)

This suit was brought in 1884 for the purpose of establishing the plaintiff's right to a share of the property left by the late Rajah Bejoy Keshav Roy. At an early date in the suit the Court Receiver was appointed receiver of the pro-

Surendro  
Keshub Roy  
v. Doorga-  
soondery  
Dossee.

---

(1) *Surendro v. Doorgassondery*, 15 C. 253.



perty, the subject-matter of the suit. On the 15th August, 1885, a decree was made in favour of the plaintiff. On the 16th September, 1886, the Court made an order, the effect of which was much discussed at the hearing of the application. That order provided that the receiver should be at liberty to accept the offer made by Baboo Sarodapersaud Soor for a lease to him of all the properties appertaining to the said estate with certain exceptions for a term of five years from the date of Pooneah in the month of Assur 1293, at the annual rental of Rs. 75,000. It was further ordered by the same order that all necessary parties as the Registrar of the Court should direct do join in the lease, and it was further ordered that the Registrar do approve of the lease and execute the same for and in the name of the plaintiff and the infant defendant, and cause the same to be registered; and it was further ordered that the Registrar do also execute the lease for and in the name of the defendant Ranee Doorgasoon-dery Dossee in the event of her not executing the same on the same being duly tendered to her for that purpose. Sarodapersaud's offer was accepted by the receiver and acted upon by both parties on the 18th September, 1886. Sarodapersaud Soor deposited with the receiver Government Securities of the nominal value of Rs. 20,000 as security for his due performance of the covenants of the *izarah*, and on the same date paid the receiver the sum of Rs. 20,000 on account of the *izarah* rent for the then current Bengali year 1293, and the receiver thereupon granted to him *amulnamahs*, the effect of which was to put him in possession of the property. Although the proposed lessee obtained possession, and the receiver obtained rent from him, no lease had yet been executed.

The Court observed as follows :—

“I am satisfied from the correspondence that the delay has not been caused by any default on the part of Sarodapersaud Soor. On the other hand, I do not think that there has been any wilful default on the part of any of the parties to the suit. On the 27th April, 1887, a decree was made by the Appeal Court dismissing the suit. The result of such decree is that the defendant Ranee Doorgasoon-dery is declared entitled to the property of her late husband. This summons was taken out on the 9th of



January 1888, by Sarodapersaud Soor ; it requires the defendant Doorgasoondery Dossee to show cause why the *izarah* should not be completed, and the draft submitted to the Registrar for approval, and also why the Government Securities for Rs. 20,000 deposited with the receiver as part security for the performance of the covenants of the *izarah* should not be retained by the receiver pending the settlement of the *izarah* and the execution thereof by the Ranee, or, in the alternative, why they should not be made over to the Bank of Bengal for safe custody pending the completion of the *izarah*, and to show cause why such securities should not thereafter remain in the custody of the receiver or of the Bank, as the case might be, during the term of the *izarah* to be dealt with only subject to the order of the Court.

“With respect to the execution of the *izarah* there are three questions for me to determine :—

1. Will the Court entertain an application by a proposed lessee with whom a contract for a lease has been made for the execution of a lease, or is it necessary that in order to enforce his right he should bring a suit for specific performance ?

2. Supposing such application to be possible when a suit is pending, does the dismissal of the suit prevent such an application ?

3. Are the circumstances of this case such as to justify the Court in refusing an order for the execution of the lease ?

“I do not think that there can be any real doubt as to the determination of the first question.

“The Court in managing property pending suit, and in managing property which is being administered by the Court has occasionally to sanction leases, and to require the execution of such leases. Summary orders are made in England for the execution of leases not only by the parties to the suit, but also by the lessee, and I find that in a case cited at page 1063 of Daniell’s Chancery Practice—*Crame v. Brancker*, (1) an enquiry was directed as to the damages which a lessee who had repudiated his contract should pay. On reference to the report of that case

---

(1) 17 W. R. (Eng.), 342, 837.



I find that the lessee happened to be a party to the suit, but this circumstance I do not think makes any difference. In that case the Master of the Rolls declined to order specific performance, but damages afforded apparently a complete remedy against the lessee. The contract for a lease is made with the Court, and as pointed out by Lord Justice Gifford in the case I have mentioned, the approval by the Judge of the offer constitutes the contract. I think that a Court has complete power to enforce summarily a contract made by it when managing or administering an estate, whatever that contract may be."

"With regard to the second question it must be remembered that the contract was completed and acted upon before the suit was dismissed, and in the ordinary course the lease would also have been signed before that event happened."

"It is admitted that the rights of the lessee are not affected by the dismissal of the suit, but it is contended that his remedy is altered. I do not assent to this contention. The lease is wholly independent of the result of the suit. I do not think that the fact that the Court has ceased to manage the property takes from it the power of enforcing the performance of subsisting contracts made by it. The dismissal of this suit only determines the rights of the parties *inter se*, and I do not think that the dismissal of the suit would any more than any other form of decree affect the remedies of the lessee."

"With regard to the third question, I do not think that there are any circumstances in this case which would justify me in refusing an order for the execution of a lease. In terms of this summons I make such order."

"As to the security deposited by the lessee, he so deposited it with the Court, and relying on the safety which would be ensured by its being kept by the receiver, I do not think it would be right to require the lessee to leave the money with the Ranee who has a limited interest only. The securities deposited by the lessee with the receiver will be paid into Court to the credit of an account to be entitled 'Andool Raj Lease Security Account'. The interest can be, from time to time, paid out to the lessee, but the principal cannot be paid out except on notice to the lessee and to



the Ranee, or, in case of her death, the person or persons then entitled to the property subject to the *izarah*." (1)

This case where it is to be observed the matter still rested in contract was subsequently distinguished in the decision cited.(2) Here a lease had been already granted by a receiver acting under an order of Court and possession of the property had been given to the lessee, and subsequently certain parties applied to the Court for a declaration that the lease was invalid and for certain other reliefs against the receivers and the lessee. *Held* that no summary order will be passed to let under the lease. The proper remedy would be by suit against the receiver and also against the lessee if it was alleged that the lease was obtained by collusion.

When the question is whether a receiver is a necessary party, the test to be applied is, whether property in the hands of the receiver is intended to be affected by the result of the litigation, because, if the property is intended to be so affected, the receiver is a proper and necessary party by way of addition to and not in substitution for the parties primarily responsible.(2a)

The appointment of a receiver does not, by itself, debar a creditor of the person over whose estate the receiver is appointed from pursuing his legal remedy by action against such debtor, or from bringing a suit for relief touching the same property; this general rule, however, is subject to the qualification that the suit so brought does not in any way interfere with the possession or jurisdiction of the Court by which the receiver was appointed.(3)

The owner of an estate cannot sue a *tahsildar* for accounts when he has been appointed by a receiver under order of Court, as there is no direct fiduciary relation between the parties. A receiver can be sued if he has moneys of the estate in hand even after his discharge.(4)

(1) *Surendro v. Doorgasoondery*, 15 C. 253, 256—259.

(2) *Kristo Chandra v. Kristo Sakha*, 36 C. 52 : 12 C. W. N. 1023. But see *Sirish v. Debendra*, 1929 C. 828, *Meyappa v. Nagammai*, 1933 M. 67 (fraud on Court).

(2a) 1946 C. 127. *Lakshmi v. Sochindra*, 41 C. W. N. 1342 (Court will readily give leave to sue).

(3) *Zohra v. Zobeda*, 12 C. L. J. 368 : 7 I. C. 75.

(4) *Harihar v. Jahar*, 26 C. W. N. 992 : 1921 C. 516 : 62 I. C. 768



As already seen, Order 40 has application to a petition under the Guardian and Wards Act,(1) or to probate proceedings,(2) or to lunacy proceedings,(2a) or to a proceeding for leave to sue as a pauper(3) or to almost every miscellaneous case of an original nature by virtue of s. 141 of the Code (see p. 2), but not to a proceeding under the Succession Certificate Act, (4) nor to a proceeding for removal of a trustee under s. 74 of the Trust Act.(5)

No receiver can be appointed under the Religious Endowment Act except under s. 5,(6) nor in a suit under s. 9 of the Specific Relief Act.(7) There is no authority that a permanent receiver cannot be appointed in an account suit.(8)

An application for appointment of a receiver should be made in open Court and not in Chambers.(9) It should name out the person whom the applicant wants to be appointed.(10) There is no provision for notice to the opposite party.(11) But, as a rule, it is issued. The Court will not consider matters that have happened since the application.(12) What has been said in this paragraph refers to Civil proceedings. To charge a receiver for a breach of the ordinary criminal law no sanction is necessary ;(13) except apparently when the act charged is one done under the Court's authority for the protection of the estate.(14)

(1) *In re Jannabai*, 36 B. 20 ;  
[*Jyoti v. Pcari*, 34 C. W. N. 192 ;  
*Chandrawati v. Jagan* 1925 L. 489  
(appeal lies) ; *Godu v. Jana* 1929 N.  
119, *Cf. Daman v. Maktul*, 1955 Punj.  
137.

(2) *Subba v. Andemma*, 1951 M.  
393 ; 17 B. 388.

(2a) *Venkata Subba v. Lalitamba*  
(1955) Andh. W. R. 320.

(3) *Bai Sakri v. Bai Dhani*, 1948.  
B. 139.

(4) *Kanhaiya v. Kanhaiya*, 46 A.  
372 (commented on in 1927 S. 187).

(5) *Assardas v. Thakurbai*, 1927 S.  
237 : 103 I. C. 816.

(6) *Gyan v. Kristo*, 8 C. W. N. 404.  
See 4 M. L. T. 88.

(7) *Foujmal v. Bhikibai*, 1937 S.  
161 ; *Balchand v. Swai*, 1949 Ajmer 11.

(8) *Raghunath v. Budaun Electric  
Co.*, 1949 A. 112.

(9) *Premji v. Premji*, 1932 B. 314.

(10) *Gopal v. Devi*, 1938 N. 540 ;  
contra. *Mohendra v. Rasik*, 6 D. R.  
50.

(11) *Ishri v. Shibram*, 1923 L.  
239.

(12) *Kshitish v. Janaki*, 35 C. W.  
N. 1141.

(13) *Nagendra v. Jogendra*, 13 Cr.  
L. J. 491 (1912) : 15 I. C. 491 (per-  
sonal and not official conduct), dis-  
tinguished in *Santoke v. Sugan*, 46  
C. 432 : 22 C. W. N. 910. See also  
*Shyamalambal v. Ramamurti*, 1948  
M. 318 ; 1944 M. 259.

(14) *Anath v. Mohendra*, 13 Cr. L.  
J. 489 (1912) : 15 I. C. 489.



## CHAPTER III

### RECEIVERS OF PROPERTY THE SUBJECT OF SUIT.

- § 18. General Principles. § 19. Cases where property is *in medio*.  
§ 20. Cases where plaintiff possesses an admitted interest. § 21. Cases where plaintiff's title is disputed by defendant claiming under legal title.  
§ 22. Miscellaneous cases. § 23. Appeal.

§ 18. A considerable portion of the text-books is occupied with a discussion of the cases or instances in which receivers will be appointed, and references are given to all the decisions in which receivers have in fact been appointed or refused. This mode of treatment had its origin in the fact that in its inception the law of receivers was a case-made law of very gradual growth declared from time to time as necessity arose and with reference to the particular circumstances of the case in which the jurisdiction was exercised. Though precedent was added to precedent, there was yet no general statutory statement of the nature and extent of this form of jurisdiction which could only be ascertained by an enumeration of all the cases in which it had been exercised. This course is, however, no longer necessary or expedient. An excessive citation of case-law even where it is not, as is sometimes the case, of doubtful authority or inapplicable to present circumstances too often serves no other purpose than to confuse and to obscure the plain provisions of modern Statutes and Codes. In England by the provisions of the Judicature Act, 1873 all the jurisdiction of the Court of Chancery was transferred to the High Court of Justice and by s. 25, sub-s. 8 of that Act, it is declared that a receiver may be appointed *in all cases* in which it shall appear to the Court to be *just and convenient* that such order should be made ; and that any such order may be made either unconditionally or upon such terms and conditions as the Court thinks fit. The effect of this Act is to enlarge very much the powers which the Court of Chancery formerly possessed, and there is now no limit to the power of the Court to appoint a receiver except that such power is only to be exercised where



"*just or convenient.*" The jurisdiction has been so much enlarged that receivers will now be appointed even on behalf of persons claiming against a legal title in cases in which the Court of Chancery could not have made the appointment.(1) So also in this country under s. 503 of the last Civil Procedure Code, *whenever* it appeared to the Court to be necessary for the realization, preservation or better custody or management of *any* property, movable or immovable, the subject of a suit, the Court might appoint a receiver of such property. Here, again, the question to be determined was one in the main if not entirely of fact. The Court might in any pending litigation appoint a receiver if the circumstances of the particular case required it. A Judge had therefore wide discretion. Rule 1 of O. XL of the present Code adopts the language of the English provisions as to justice and expediency. But discretion must be judicially exercised.(2) The appointment of a receiver *pendente lite* is a matter entirely within the discretion of the Court and must in the exercise of the discretion be guided by the circumstances of each particular case.(3) Though the discretion to grant relief will in the main be influenced by the particular facts of each case, it must also be guided by certain broad and well-established principles which have governed previous practice, and which though unexpressed, may be said to underlie the provisions of the Code.

In the first place, the jurisdiction thus given must not be lightly but most cautiously exercised.(4) The relief is not one *ex debito justitiæ*, but one which is purely within the judicial discretion of the Court. The power to appoint a receiver is not to be generally exercised as a matter of course, and it is not a reason for allowing an application that it can do no harm to appoint a receiver.(5) The appointment of a receiver is in many cases a matter for the most serious consideration, for the Court by taking possession at the instance of a plaintiff may be doing a

(1) Kerr, Ch. I.

(2) *v. ante*, Ch. I.

(3) *Eastern Mortgage Co. v. Rakea*,  
16, C. W. N. 997 : 17 I. C. 202.

(4) *Mun Mohinee v. Ichamoyee*, 13  
W. R. 60 (1870).

(5) *Prosonomoye v. Beni*, 5 A, 556.  
*Vide* p. 27.



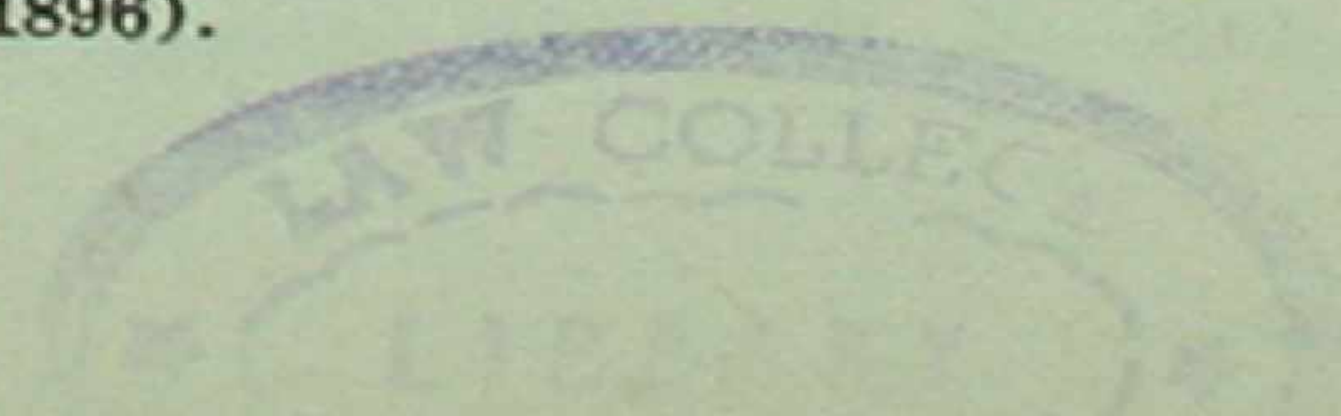
wrong, in some cases irreparable, to the defendant. For if the plaintiff should eventually fail in establishing his right the Court may, by its *interim* interference, have caused mischief to the defendant for which the subsequent restoration of the property may afford no adequate compensation. See pp. 29, 94.

The observations of the High Court(1) made with respect to the exercise of the jurisdiction to grant injunctions and which *a fortiori* apply, in the case of receivers, a remedy of a still more stringent character, may here be appropriately referred to.

“We must take leave to say this that the power of granting an injunction is one which has been perhaps a little lavishly bestowed upon the Courts in the mofussil in this country. It is a tremendous power, and one which the superior Courts most carefully guard themselves from exercising hastily or without solid grounds. And this is not the first occasion by any means in which the exercise of the power of granting an injunction, which has been conferred upon the smaller Courts in the mofussil, has led to results by no means satisfactory. Here a business, for aught we know, a valuable business has been, since the first of October, suddenly and peremptorily stopped until this the 12th of February and stopped as we must now pronounce it, in this Court to have been without the slightest legal foundation laid before the Court. We must express our regret that the officer who granted the injunction had not before him, when the application to dissolve the injunction was made, the legal considerations which ought to have then guided him. We should be very sorry in expressing our disapproval of the course taken by him, to say anything whatever in disparagement of that officer. He plainly does not understand the character of the jurisdiction he was exercising, and he is not to be blamed for that. A jurisdiction, originally and perhaps properly belonging only to superior Courts possessed of legal knowledge and experience is imposed on Courts in the mofussil which sometimes share with the victims of its exercise, the inconvenience of its being so imposed on them. It would be unfair to blame such tribunals much, if they do sometimes go astray in the

---

(1) *Baddam v. Dhunput*, 1 C. W. N. 430, 432 (1896).





use of it. But we must examine the course taken by the Deputy Commissioner. When applied to on the ground that under s. 494 of the Code of Civil Procedure, notice should have been given, he says :—‘I fail to see, nor has it been made clear to me, how the failure to serve petitioner with the required notice under s. 494 of the Civil Procedure Code can have had anything to do in causing loss. The injunction was issued without notice as the matter was considered urgent in connection with offending religious prejudices and causing rioting.’ In truth, the Deputy Commissioner, we do not say unnaturally but very erroneously, applied the full powers of an injunction for purposes relating rather to his executive than to his judicial functions, not, perhaps, quite correctly, even had he been acting in his executive capacity ; because there is not one word in the proceedings from first to last which could properly have been (*sic : qu* “have led him”) whether in his capacity of Colonel G., Deputy Commissioner or in his capacity of Subordinate Judge of this district to come to the conclusion that there was any danger of a riot. Not one word is there in the proceedings from first to last indicative of such danger save what is contained in the judgment which we have just read.”

In an application for the appointment of a receiver it is sufficient if a *prima facie* title to the property over which the receiver is sought to be appointed, is made out. The fact that a large amount of property is removed by the defendant under circumstances which may fairly give rise to suspicion during the pendency of a suit in which the question of title to that property is to be determined is in itself a sufficient ground for the appointment of a receiver.(1)

It is of course no ground for refusing to appoint a receiver that the acts complained of amount to a criminal offence, and that

---

(1) *Sham Chand v. Bhaya Ram*, 5 C. W. N. 365 (1894). In this case a receiver was appointed of the property of the shrine of Tara-keswar, liberty being given to move to extend the rule on fresh materials. The Court directed that the conduct of the daily *Sheva* was not

to be interfered with, and that the receiver was to pay for them out of the offerings he received : followed in *Sree Ram v. Mohabir*, 27 C. 279 : 5 C. W. N. 362. And see as to removal of property, *Chandidat v. Padmanand*, 22 C. 466..



a criminal prosecution is available to the petitioner. Where in a suit for partition of the estate of a trading joint family which estate belonged to the plaintiff and his brother, the eldest surviving member of the family, it appeared that the latter had for some time past misappropriated large sums of money and had thrown the account into confusion and the plaintiff applied for a receiver, the Judge dismissed the petition. The order was reversed on appeal by the High Court which observed as follows :—"The reason assigned by the Judge for declining to appoint a receiver is that the acts complained of amount to misappropriation rather than waste, and that the petitioners can hereafter institute a criminal prosecution. These are clearly not sufficient reasons. Section 503 of the Code authorises the appointment of a receiver for the preservation or better custody of property the subject of a suit. Whether property is wasted or misappropriated makes no difference for the purpose of this section. The future institution of a criminal prosecution will not enable a party to recover property that may have been misappropriated."(1) See pp. 23-24.

Nextly, the situation of the property and parties must be considered. Where the property is as it were *in medio* in the enjoyment of no one, the Court can hardly do wrong in taking possession through its receiver. It is the common interest of all parties that the Court should prevent a scramble. Such is the case, amongst others, when a receiver of a property of a deceased person is appointed pending litigation as to the right to probate or administration. The appointment of a receiver or administrator *pendente lite* is a matter of course ; no one is in the actual lawful enjoyment of property so circumstanced ; and no wrong can be done to any one by taking it and preserving it for the benefit of the successful litigant. But where the object of the plaintiff is to assert a right to property of which the defendant is in possession or enjoyment, the case is necessarily involved in further considerations.(2) See pp. 28-29.

---

(1) *Hanumayya v. Venktasubbaya*, 18 M. 23.

1033 ; referred to and followed in *Sidheswari, v. Abhoyeswari*, 15 C. 818, 823 ; *Chandidat v. Padmanand*, 22 C. 459, 464, 465.

(2) *Owen v. Homan*, 4 H. L. 1032,



In the first place, there are the cases in which the plaintiff has an admitted interest in the property in suit and in which no case of title arises, but a question does arise as to whether the management of the property shall be taken from those in possession of it, such as the cases of joint ownership, partnership, tenant-for-life and remainder-man. The Court will not without sufficient grounds interfere with the defendant's admitted right to joint possession and management, though it will more readily do so when the relief is sought as ancillary to partition or dissolution, a decree for which will determine that right. In the third instance cited, the effect of an appointment of a receiver would be to disturb not merely a present but an exclusive possession in favour of a party whose interest is *in futuro*. Then there are the cases of trusts, executors or similar fiduciary relations. Here the creator of the trust or testator has himself declared the person in whom the trust for the administration of the property shall be reposed. Notwithstanding the plaintiff's interest the Court will ordinarily require a strong case to dispossess a trustee or executor who is willing to act. In the last class of cases the Court considers the question of the party entitled to management; in the first not merely this question, but also the effect of the appointment on the beneficial interest of the defendant in the property for which a receiver is desired.

In the second place, there are the cases of disputed title in which the defendant who is in possession denies the interest of the plaintiff altogether. Here the Court will not interfere by appointing a receiver when a right is asserted to property in the possession of a defendant claiming to hold it under a legal title unless a strong case is made out. And the reason is obvious. In such cases the Court by appointing a receiver, interferes with the possession before the title of the plaintiff which is the issue to be tried in the suit itself, is made out, and should the plaintiff fail, the Court may, by its *interim* interference, have caused mischief to the defendant for which the subsequent restoration of the property may afford no adequate compensation. In such cases, therefore, it exercises with the greatest care a discretion which must be governed by all circumstances of the case.



[Thus where a partnership is denied by the defendant, the Court usually declines to appoint a receiver until that question is determined].(1)

Lastly, there are a large number of miscellaneous cases which fall within one or another of the above-mentioned sub-divisions, or partly in one and partly in another, according to the facts of the particular case.

In this Chapter the cases are dealt with in the following order : (a) where the property is *in medio*, (b) where the plaintiff possesses an admitted interest, (c) where the plaintiff's title is disputed by the defendant claiming under legal title, (d) miscellaneous cases.

It necessarily follows from the nature of the jurisdiction as thus far disclosed, as well as from the purpose and object usually had in view in the appointment of a receiver *pendente lite*, that the remedy is a provisional or auxilliary one, invoked as an adjunct or aid to the principal relief sought by the action, and not always or necessarily the ultimate object of that action. The application for a receiver may succeed or fail, and yet in no manner affect the principal controversy or determine the final result. And in this respect the appointment of a receiver *in limine* bears no closer relation to the action in which this extraordinary relief is sought than an attachment in aid of an action upon a promissory note bears to such action. The appointment of a receiver *in limine*, therefore, like the granting of a preliminary or interlocutory injunction, is not an ultimate determination of the right or title, and the Court, in passing upon the application, in no manner decides the questions of right involved, nor anticipates its final decision upon the merits of the controversy ; the leading idea upon the preliminary application being merely to husband the property or fund in litigation for the benefit of whoever may be determined in the end to be entitled thereto. The decision upon the application for a receiver *pendente lite* is, therefore, without prejudice to the final decree which the Court may be called upon to make, and the Court expresses no opinion as to the ultimate questions of right involved. And if the plaintiff presents a *prima facie* case, showing an apparent right or title to the thing in controversy and that there is imminent danger of loss without the intervention of the Court, the relief may be granted

(1) *Abdul Momin v. Hussain*,

Pak. L. D. 1955 Sind 21, 26.



without going further into the merits upon the preliminary application.(1) Indeed, upon an interlocutory application for a receiver, a Court of Equity usually confines itself strictly to the point which it is called upon to decide, and will not go into the merits of the case at large, since the Court is bound to express its opinion only to the extent necessary to show the grounds upon which it disposes of the application.(2)

When the Court simply refuses at a particular stage of a case and in a particular proceeding to entertain an application, and another application the same as the former one based upon substantially the same allegations of fact is made to another Judge, the same reasons existing for refusing to entertain it : though the former decision is not such as to enable the defendant to raise the plea of *res judicata*, the Court will refuse to make the order asked for. Under such circumstances though the jurisdiction of the Court to entertain the application is not ousted by the former proceedings, it is contrary to the usual procedure and practice

(1) High § 6, citing amongst other cases, *Leavitt v. Yates*, 4 Edw., Ch. 162 : *Leavitt v. Yates* was a bill to set aside a deed of trust transferring certain securities, and a motion upon bill and answer for an injunction and for a receiver to take charge of the securities *pendente lite* McConn, Vice-Chancellor, observes : "The argument has embraced all the points which the pleadings are calculated to present when the cause shall be brought to a hearing for a final decree ; but it does not follow that a decisive opinion is to be expressed in this stage of the cause upon the rights of all the parties ; for whatever, may be the result of a motion of this kind, the general understanding is that it is *without prejudice to the ultimate decision* which the Court may be called upon to make. Insolvency and danger to the fund, pending the litigation, with a *prima facie* case and probable cause for sustaining the bill, are or ought to be sufficient in the first instance to found an injunction and a receivership upon, without going minutely into the merits. My own observation has taught me that, in general, it is most prudent and best

promotes the ends of justice to go no further upon the motion."

(2) High § 6, *Skinner's Company v. Irish Society*, 1 Myl. & Cr., 162. See also *Conro v. Gray*, 4 How. Pr. 166. High. § 6, *Prosonomoyi v. Beni Madhab*, 5 A. 561 ["without in any way anticipating the result of the suit in the course of which the order now before us on appeal has been made, etc."]; *Sidheswari v. Abhoyeswari*, 15 C. 823 ["Our observations are of course based on the limited materials before us and can have no effect upon the ultimate decisions."] *Sree Ram v. Mohabir*, 27, C. 282. [Although we are far from wishing to prejudge the case in any way, we certainly think a fair *prima facie* case has been shown to exist on the side of the plaintiff. But as we have said, we do not wish to prejudge the case ; and we must here point out that no evidence on oath has been given. There are nothing but affidavits to go upon ; and therefore the view we take upon these affidavits may entirely be set aside when the witnesses are cross-examined—as cross-examined they will be—before the Subordinate Judge at the trial."]



of the Court for one Judge to make an order which has been refused by another Judge, even though arguments should be urged before him which were not urged before the Judge to whom the first application was made. If an order is wrongly refused, the proper course is to seek to review it, or to appeal from it, not to seek to obtain the order by resorting to another Court.(1)

§ 19. When the property is as it were *in medio*, in the enjoyment of no one, the Court can hardly do wrong in taking possession. It is the common interest of all parties that the Court should prevent a scramble. A leading illustration is to be found in the case when a receiver of the property of a deceased person is appointed pending litigation as to the right to probate or administration. No one is in the actual lawful enjoyment of property so circumstanced, and no wrong can be done to any one by taking it and preserving it for the benefit of the successful litigant.(2) In such cases, therefore, the appointment of a receiver is almost a matter of course. *See pp. 28-29.*

Cases where the property is *in medio*.

Under the practice of the English Law of Chancery, receivers were frequently appointed pending a litigation in the Ecclesiastical Court over the probate of a will or the right to administer an estate. The relief was granted in this class of cases, not because of the contest in another Court, but because there was no person to receive the assets, and it was therefore the duty of a Court of Equity to lend its aid for the preservation of the assets pending the litigation. The Court acted solely with a view to the preservation of the property. After, however, the passage of the Probate Act 20 & 21 Vict., c. 77, which abolished the testamentary jurisdiction of the Ecclesiastical Courts and established a Court of Probate the Court of Chancery, as a general rule, refused to exercise its power in such cases where an administrator *pendente lite* had been appointed under the Act, so that a conflict between the Courts might be avoided. The administrator in such case could do everything that was necessary for the protection of the property. There was nothing, however, in the Probate Act which ousted the original jurisdiction of the Court of Chancery

Testamentary suits.

(1) *Motivahu v. Premvahu*, 16 B. 511.

(2) *Owen v. Homan*, 4 H. L. 1032-1033.



and if an administrator had not been appointed by the Probate Court, the Court of Chancery appointed a receiver as a matter of course.(1)

In this country also the Courts have power to appoint a receiver in a testamentary suit.(2) In this case the Court observed as follows :—

“In England, the Court of Chancery, in cases of disputed representation in the Ecclesiastical Courts, was in the habit, on a proper case being made, of appointing, *pendente lite*, a receiver of property the representation of the former owner of which was in dispute : [ see *Watkins v. Brent*, (3) *Rendall v. Rendall* (4) ] ; and since the Court of Probate Act, 1857, came into force, the Court of Chancery has exercised the same power—*Parkin v. Seddons*.(5) But these were orders of a Civil Court made in suits filed for the specific purpose of obtaining a receiver. The Court of Probate Act, 1857, however, gave authority to the Testamentary Court to appoint an administrator provisionally to take charge of the personal estate of a deceased person pending any suit touching the validity of his will, and to appoint such administrator or any other person receiver to collect the rent of and to manage his real estate. These provisions have been consolidated and transferred into the Indian Succession Act (X of 1865), s. 239(6) which empowers the Court to appoint an officer to take and keep possession of the property of a deceased person until probate or letters of administration are granted. This section, however, is not repeated in the Probate and Administration Act ( V of 1881 ) (7). I should have no hesitation in acting under this section if the will was one to which the Indian Succession Act applied, but as the will in the present case would apparently be governed by the Probate and Administration Act, 1881, it is necessary to look more closely into the question.”

(1) Kerr, 23 *et seq.* High, § 46 ; Beach, § 64.

(2) *Yeshwant v. Shankar*, 17 B. 390, 392. See also *Subba v. Andemma*, 1951 M. 393 ; *Roshan Lal v. Md. Afzal*, Pak. L. D. 1949 L. 60.

(3) Myl. & Cr., 102.

(4) 1 Hare, 152.

(5) L. R. 16 Eq., 34.

(6) Now Act XXXIX of 1925, s. 269.

(7) *Vide* clause 2 Act XXXIX of 1925, s. 269.



“The section by which this will would be excluded from the Indian Succession Act is s. 331, but that only excludes from the operation of that Act intestate or testamentary succession of Hindus, and does not forbid the procedure provided thereby (in the course of granting probates, &c.), to be applied to Hindu or other excepted wills.(1) See the case of *Kokya Dine*(2) which was with reference to a Buddhist will. Why, then, was this useful provision not inserted in the Probate and Administration Act, 1881? My own impression is that the framers of that Act having provided in s. 55 that proceedings in relation to the granting of probate and letters of administration should be regulated by the Civil Procedure Code, and knowing the provisions of that Code as to receivers, and seeking to avoid the repetitions, in the Probate Act, of any provision which was in the Civil Procedure Code, have left the appointment of a receiver to be regulated by the provisions of that Code. For these reasons, I should without difficulty have come to the conclusion that this Court in its testamentary jurisdiction had power to appoint a receiver. Mr. Jardine has, however, referred me to a motion in Testamentary Suit No. 11 of 1891, in which Farran, J., on the 13th August, 1891, refused to appoint a receiver. There is no written judgment, and consequently I cannot ascertain whether the refusal was on the merits or on a point of law. It was, however, argued that the property of the deceased was not the subject of a suit. Possibly not directly, but the present suit is to determine who is to have the possession and management of the property of the deceased—in fact, who is to be the person in whom all the rights of the deceased are to vest and thus become the legal owner. If a suit were brought on the civil side to determine who had the right to the possession and management of the property, the provisions of the Specific Relief Act (1 of 1877) would ordinarily require a prayer to be inserted for possession of the property, but I cannot see the substantial difference, as regards *interim* remedies, between a suit in this form and a suit on the testamentary side, the result of which will be to declare that, by virtue of the provisions of a will,

---

(1) Act XXXIX (Succession) of 1925, s. 4.

(2) 2 B. L. R. A. C. J. 79.



a certain person has the right to stand in the shoes of a deceased owner, and thus be entitled to have the possession and management of all his property. It seems to me that the property is the subject of the suit, in the one case, directly, because possession is sought, and in the other, because the decree will determine who is to have authority over, and to be entitled to get possession of, certain property which is set out in a schedule to the petition for probate or letters of administration. Consequently, I see nothing in the law relating to procedure which would prevent me appointing a receiver in this case without regard to any consent on the part of the plaintiff. It is true that the Administrator-General's Act empowers the Court to authorise and require the Administrator-General to take charge of property of deceased persons which is in danger, yet I doubt whether this provision deprives the Court of any other powers it may possess; and although in many cases the Administrator-General might most conveniently be appointed, a receiver might be better in others. In the present case, a receiver has by consent been appointed for certain purposes, and I, therefore, consider that, if the Court is to take any action, it will be better to enlarge the present receiver's powers than to enjoin the Administrator-General to take possession of the assets of the estate." (1)

In this country where the testamentary and civil jurisdictions, whether legal or equitable, are exercised by the same Courts, the English cases relating to conflicting jurisdictions are not of importance. If, however, an application were made for the appointment of a receiver of an estate over which an administrator *pendente lite* had at the time of the application been appointed in a probate proceeding, such application would probably be refused, and if a receiver had already been appointed he would doubtless be discharged, and the administrator allowed to receive the estate. It has been held that a Court of Probate has power to appoint an administrator if it is just and proper to do so, although a receiver has been appointed by the Court of Chancery in a suit pending between the same parties and affecting the same property

---

(1) *Yeshwant v. Shankar*, 17 B. 390-392. See *Khader Bee v. Dastagiri* (1958) 2 Andh. W. R. 149 (re-

moving administrator in administration suit).



as the testamentary or administration suit.(1) The Courts in their testamentary jurisdiction frequently in cases of litigation concerning probate or administration appoint an administrator *pendente lite* instead of a receiver, which is perhaps in certain cases the more correct course.

While there were frequent instances where the English Court of Chancery allowed receivers pending litigation as to the probate of a will when the relief was necessary for the preservation of the estate, the fact that after a will has been duly admitted to probate, litigation is instituted to recall or revoke the probate, does not *of itself* constitute sufficient ground to justify a Court of Equity in interfering by a receiver with the possession of the parties entitled thereto under the probate. And this is so even though the probate issued in "common form" has been ordered into Court, and the parties directed to prove in "solemn form." (2) A special case was required to be made out for doing so. The general principle was stated to be that where there is a legal title to receiver, the Court ought not to interfere unless where the legal title is abused or that there is proof that it is in danger of being so.(3) So the Court has interfered where a fair *prima facie* case of fraud was made out, or where it appeared that the legal right to receive the assets was being, or in danger of being, abused whether from insolvency or otherwise, or where it appeared that there was no executor or administrator in existence with the right and power to act as such, notwithstanding that there was no improper conduct.(4) The Court may also in an application to revoke probate appoint an administrator *pendente lite*.(5)

In the undermentioned case an application was made for probate. The petition was received, the Court refused to issue probate as a caveat had been entered and ordered the matter to be set down as a contentious cause. The applicant, therefore, applied for a receiver pending the litigation as to the right to probate, and a receiver was appointed with the consent of the

---

(1) Kerr, Ch. I. Henderson's Testamentary Succession in India, 180.

(2) *Newton v. Ricketts*, 10 Beav., 525; High, § 701; Beach, § 65; Kerr, *ib.*

(3) *Per Turner, L. J. in Devy v. Thornton*, 9 Ha. 229.

(4) Kerr, *ib.*

(5) Indian Succession Act, s. 247; *Ganpat v. Prahlad*, (1951) N. 178.



caveatrix. Subsequently on the grant of probate the receiver was discharged, and the caveatrix was ordered to pay all costs occasioned by his appointment.(1)

In the same case the will was alleged to be a forgery ; a receiver was, as stated, appointed upon the motion of the applicant for probate consented to by the caveatrix. Upon judgment declaring the applicant entitled to probate the applicant applied for and obtained an order against the defendant that the latter should pay all costs occasioned to the estate by the appointment of a receiver, the Court holding that though the receiver had been appointed upon the motion of the applicant for probate, such a course had been rendered necessary by the conduct of the caveatrix in opposing the will. Directions were given to the Taxing Master to ascertain these costs.(2)

A receiver, appointed in an administration-suit instituted by a creditor of a deceased person against his executor, is not an agent of the executor within the meaning of s. 19, Limitation Act, 1908. He is the agent and an officer of the Court. But when in such a suit another creditor of the estate applied to rank as such and the receiver submitted a statement in the presence of the executor admitting the debt due to the applicant, but the Court after some time directed the applicant to bring a fresh suit ; but on the suit being instituted he was met with the plea that the claim was barred by limitation ; *held* that in the face of the admission made in his presence the executor was estopped from setting up the Statute of Limitation as a bar.(3)

§ 20. Nextly, there are the cases in which the plaintiff has an admitted interest in the property in suit. In the classes of cases to be considered no question of title in general arises but a question whether the management of the property shall be taken from those in possession of it does arise.(4)

Cases where plaintiff possesses an admitted interest.

(1) In the goods of *Lutchminarain Bogla*, Suit No. 4 of 1901, Cal. H. C. Stanley, J. 26th March, 1901. Judgment reported in 5 C. W. N. cclxi.

(2) In the goods of *Lutchminarain*

*Bogla*, 5 C. W. N. cclxi (1901).

(3) *Baij Nath v. Hem*, 10 C. W. N. 959.

(4) See *Suprasanna v. Upendra*, 13 C. W. N. 533 : 22 I. C. 601.



The Court of Chancery following the general principles of Courts of law was in general, and owing doubtless to the equality of right, possession and user in such cases, little disposed to interfere between tenants-in-common or joint tenants. But a co-sharer is entitled to possession and may therefore not be excluded; he is also entitled to enjoyment of the property in its actual condition and is therefore entitled to be protected from waste. It may be stated as a general rule therefore that a receiver could not be appointed unless in cases of destructive waste or gross exclusion or where the property is of such a nature, as in the case of mines, that its chief value consists in its continual working and that this is prevented by dispute about the management. The same considerations are applicable to the case of tenancy-in-common in equitable estates. As regards the extent of the receivership in the class of cases under consideration, see Chapter II, *ante*. The order appointing a receiver will sometimes be in the alternative that, unless the co-tenant gives security to account for the portion of the rents due to his co-tenant, a receiver will be appointed. Where some of the tenants-in-common are infants there may be a receiver over the whole estate with direction to pay to the adults their shares in the rents.

Joint tenants  
and tenants-  
in-common.

While, as has been already stated, equity is generally averse to extending the aid of a receiver, as between joint owners or tenants-in-common, yet in cases of mining property or collieries there are from the nature of the property stronger reasons why the relief should be allowed when there is a disagreement as to the management of the property than in cases of ordinary real estate. The principal reasons for such an appointment are that property of this nature derives its chief value from the continued working of the mine, a cessation of which would lead to considerable loss.

Moreover such property cannot conveniently be carried on by a large number of persons, each employing independently a manager and workmen. To avoid such complications and embarrassments, receivers have been appointed of mines which are to be considered in the nature of a trade and where the interests in land which parties take as tenants-in-common is in the nature of a trade,



a receiver will be appointed or refused on the same principles as in partnership cases.(1)

Though persons may have surrendered their right to joint management they yet have a right to see that their interest in the joint property is protected and to the appointment of a receiver if necessary. This principle is illustrated by the undermentioned case(2) in which the facts were as follows :—

Early in the eighteenth century two villages were granted by the Zaminders of Sivaganga and Guntamanaikanur to the last of the Naik rulers of Madura for the maintenance of the rank and dignity of his family, which was now represented by the plaintiffs and defendants Nos. 1 to 23. The property was long managed by the representative for the time being of the senior line. In 1844 one of the junior members instituted a suit for partition, which terminated in a decree declaring the corpus of the property to be indivisible and the annual produce to be divisible in certain shares. Subsequently in 1857 a compromise was entered into, by which the parties agreed to vary the distribution of the shares, but they agreed that the management of the estate, indivisible and inalienable, should continue to be vested in the eldest line, subject to certain supervision on the part of the other members. The compromise was long acted upon by the family, but in 1892 the representative of the senior line died, leaving only his widow and infant sons. The widow, as guardian of the elder son, then entered on the management, and, being Gosha, delegated it to a stranger.

The plaintiffs representing a junior line now sued for the removal of these persons from management and the appointment of another manager, alleging both that they had no right to the managership, and that they had been guilty of mismanagement.

(1) High, §§ 603—608 ; Kerr, 106-109 ; Beach, §§ 489—491, and as to waste and trespass by co-sharers in India, see § 77 et seq. of the

Author's Law of Injunctions, 5th Ed., and cases there cited.

(2) *Kumara Tirumalai v. Bungaru*, 21 M. 310.



All the members of the family were made parties to the suit. The prayers of the plaint were as follows :—

“That defendants, Nos. 1 and 24, be declared incapable of managing the affairs of the two villages hereunder mentioned in Schedule A, and they and twenty-fifth defendant be removed from the said management.

“That the Court be pleased to appoint first plaintiff or other persons among the family whom the Court may think fit for the management of the plaint properties with all the powers incidental to the management, such as grant of patta to the raiyats, distribution of the income among kangalies, &c.

“That it be declared that the power of agency granted by twenty-fourth defendant to twenty-fifth defendant is invalid and not binding on plaintiffs.

“That twenty-fourth and twenty-fifth defendants be decreed to give plaintiffs personally, and from the estate of first defendant, Rs. 421-6-9 on account of plaintiff's share of produce, which they could, on proper managements, have got for fasli 1304 as per Schedule C, and also produce of subsequent faslis.

“That the Court be pleased to declare that *cowles* in favour of defendants Nos. 26 to 32 by defendants Nos. 1 and 24 specified in Schedule B, are not binding on plaintiff and other members of the family, and to decree possession of the lands on behalf of the family to whomever the Court may appoint as manager.”

It appeared that the plaintiffs had not received their proper share of the produce, and the defendants in management denied in the pleading their right thereto. The plaintiffs had not obtained a certificate from the Collector under the Pensions Act (XXIII of 1871), and it appeared that the grant of the villages had been confirmed as an *inam* by the British Government :

*Held* (1) that the suit did not fall within the provisions of Pensions Act, s. 4, and a certificate of the Collector was accordingly unnecessary.



(2) That the compromise was binding on the parties, and that under the compromise the plaintiffs had no right to joint management, and

(3) That the widow of the last manager should be removed from the managership, and that until one of her sons came of age, the estate should be managed by a receiver appointed from among the members of her family. In the judgment the Court observed as follows :—

“The most material question in the suit which is now left for our decision is, whether the twenty-fourth defendant should not be removed from the management, and if she is removed therefrom, how the management is to be carried on during the incapacity of defendants Nos. 1 and 2 by minority or otherwise. The settlement of this question depends very much upon the settlement of the question of what interest in the estate the members of the family, other than defendants Nos. 1 and 2, possess. The Subordinate Judge has found that the first and second defendants are the absolute owners, and that the other members have only a right to *maintenance* according to the shares agreed upon. But we cannot concur in this view. The right, which the other members of the family undoubtedly have to specific defined shares out of the net income of the estate, is certainly greater than the right to mere maintenance. An absolute right to take the rents of land ordinarily involves a right to the land itself [see *Mannox v. Greener*, (1) and s. 172 of the Indian Succession Act, where the same principle is laid down.] But where there is a clear intention that only the profits of the land are to be taken and not the *corpus* the general rule would not apply. Now, here we have both in the decree in the suit of 1884, and in the *razinamah* (Exhibit C) a clear prohibition against the division of the *corpus* which is declared to be impartible. But for this prohibition, the members of this family would be entitled by virtue of the division of the shares of the produce to a division of the lands, and it is only the decree, which we cannot question, that prevents such division. But that the members of the family have a common right in the property is declared in the answers by

---

(1) L. R. 14 Eq., 456.



the pandits. In their first answer, they say that the estate having been granted for the maintenance of this family belongs to all its descendants, and in their second answer they refer to the property as common to all the members of the family. Their opinion so clearly expressed is no doubt in accordance with the law. So that we must view the plaintiffs and defendants Nos. 3 to 23 as co-owners of the property with defendants Nos. 1 and 2. That being so, *they would have an equal right to management* with defendants Nos. 1 and 2 had it not been for their own agreement in the *razinamah* that the sole right of management should remain in the eldest branch of the family represented by defendants Nos. 1 and 2, that precludes them from claiming such a right now. It is urged on their behalf that the *razinamah* (Exhibit C) itself contemplates a right to joint management. But we are altogether unable to read it in that light. It seems to us clear that the only right reserved to the other members of the family after placing the sole right of management in the senior branch of the family is that of supervision only. Although they have thus bartered away their right to joint management, they yet have *a right to see that their interest in the joint property is protected*, and they very naturally complain that the affairs of their estate are now being actually managed by a complete stranger, the twenty-fifth defendant, the agent of the twenty-fourth defendant. The twenty-fourth defendant is clearly not a proper person to be entrusted with the management of the whole estate, for she is a gosha lady and is, in consequence, compelled to employ an agent to do work for her. Moreover, he or she or both together have not only omitted to distribute to the plaintiffs their proper share of the produce of the land, but have gone further and denied their right to it in this suit. These circumstances are quite sufficient to disentitle her to hold the management any longer. As the natural guardian of the first and second defendants, she may be entitled to look after their interest, but their interest is, as we have shown, only a small portion of the whole interests involved. We shall, therefore, direct her removal from the managership, and with her, of course, the twenty-fifth defendant, her agent. It remains to determine who is to look after the estate, while the first and second defendants, who are entitled by right to do so, are incapacitated by reason of their non-age. The *razinamah* contains no provision for a case like this, where the person entitled to manage is incompetent,



and we have found that the other members of the family are not entitled as of right to take up the management. In the absence then of a competent hereditary manager, we think the proper course will be to direct the appointment of a receiver for the proper preservation of the property, until the first or second defendant is competent to undertake the duties of hereditary manager. We shall, therefore, direct that one of the parties interested in the property, either the first plaintiff or such a one of the defendants No. 3 to 23 as is a major and otherwise eligible, be appointed as receiver of the estate without remuneration, until the first or second defendant attains majority, or until further orders. It will be left to the Subordinate Judge to select the individual, and he will take security from him to the amount of one year's income."(1)

Where parties to a partition-suit agree at the outset to have a receiver, if the appointment seems reasonably necessary to preserve and maintain the rights and interests of the parties, the Court will act; and whenever it appears during the prosecution of a suit in partition between tenants-in-common or joint tenants that a receiver is necessary to protect the interests of all the parties, the Court will upon proper application appoint a receiver of the property.(2)

Whilst, however, the Court will appoint a Receiver in a partition suit by consent, in other cases special circumstances must be proved such as a *prima facie* title and danger of waste. The mere fact that there is a dispute is not sufficient reason for appointing a receiver.(3) There must be specific act of malversation or mismanagement.(4)

Receivers have frequently been appointed in this country in suits for partition of property. [There is no hard and fast rule in this matter.(5)]

(1) *Kumara Tirumalai v. Bungaru* 21 M. 310.

(2) Beach § 492; High, § 607. In England under the Judicature Act, 1873, the Court has jurisdiction in a partition-action to appoint a receiver until the trial although there has been no exclusive occupation. *Poter v. Lopes*, 7 Ch. D. 358;

*Bhubaneswar v. Rajeswar*, 1948 P. 195.

(3) *Govind v. Vallabh*, 22 Bom. L. R. 217; 55 I. C. 827.

(4) *Krishnan v. Nani*, 1935 M. 402; 156 I. C. 229. Cf. 14 C. W. N. 248, (1951) Mys. 55 F. B.

(5) *Kochuvarki v. Anthony*, 1956 T. C. 205.



The undermentioned case(1) was a suit for a declaration that an indenture (being an agreement to mortgage) dated the 13th May 1886, and executed under the authority of an order dated the 6th May 1886 by the receiver appointed in two pending suits, created a valid charge in favour of the plaintiff over the properties specified in the schedule to the agreement (being the whole of the joint estate in which the defendants were interested), and for an account and sale. The present defendants were also parties to the above pending suits in which the receiver was appointed, and the agreement was executed by the receiver in his own name and purported to create a charge on the entire property. The agreement was drawn and caused to be executed by the attorney for the plaintiffs in one of the above suits at whose instance the order of the 6th May 1886 was obtained and who had the carriage of the order. The defendants admitted that the plaintiff advanced the money and that it was applied for the purposes for which the Court gave the receiver liberty to raise money, but they contended that the order was made without jurisdiction, that the plaintiff should have made an application in the suit in which the order was made, and that the receiver had no authority to bind the parties in his own name. The decree in the Lower Court was in the plaintiff's favour.

The judgment of Mr. Justice Trevelyan in the Lower Court was as follows :—

Poreshnath  
Mookerjee v.  
Omerto Nauth  
Mitter.

“Several questions were raised by Counsel for the defendants. It was first contended that the order authorising the mortgage was made without jurisdiction, and was therefore void. Mr. Philips for one of the defendants argued that the Court had no jurisdiction in a partition-suit to appoint a receiver, and that it had no jurisdiction to authorise the receiver to deal with the property. I cannot assent to this argument. I do not think there can be any doubt that property sought to be partitioned is the subject of a partition-suit ; and if that be so, s. 503 of the Civil Procedure Code authorises the Court to appoint a receiver. Receivers have frequently been appointed in partition-

---

(1) *Poresh v. Omerto*, 17 C. 614



suits in this Court. Where it is necessary for the preservation of the estate it has always, so far as I know, been taken to be law in this Court that the Court may authorise the receiver to charge the property. The Court, if it can appoint a receiver, has ample powers to provide for the management of the property ; and if the property is in danger of being lost, the Court has surely power to prevent such loss by raising money on it. The Court can deal with property which is under its control just as completely as the owner of the property can deal with it. How far the Court ought to allow a sale or a pledge of course depends upon the circumstances of each case. I think it is clear that the Court has jurisdiction.

“The next contention which I think I must notice is that this suit does not lie, but the plaintiff’s remedy (if any) is by application in the suits in which the order was made. The fact that the plaintiff may have a remedy in those suits does not exclude his remedy in this suit. I know of no provision of law which takes away his remedy and no such provision or precedent has been cited to me. It is by no means clear that the present plaintiff could have in the other suits obtained the relief he now seeks. He might have in those suits compelled the drawing up of a formal mortgage, but it may be a question whether he could have therein asserted his remedies under such mortgage.

“The next point was that the receiver could not have bound the parties by an agreement made in his own name. The order of the 18th of March 1886, under which the receiver acted, gave him liberty to raise Rs. 30,000 by mortgage of the joint estate at such rate of interest and upon such terms as he should think fit. He was also given liberty to execute the mortgage and get the same registered on behalf of the parties interested in the joint estate. This question can, I think, be answered by reference to the case of *Wilkinson v. Gungadhur Sircar*(1) which is the leading case in this country on the position of a receiver. Mr. Justice Phear there points out (p. 488) that in his opinion whatever the receiver rightly does with regard to the property under his control, he does in the character of agent for the owners of the property. I think that this principle applied just as much with

---

(1) 6 B. L. R. 486.



regard to parties to the suit who opposed his appointment or who objected to his receiving particular powers, as it does to the parties at whose instance he is appointed or set in motion. This being so, the ordinary law of principal and agent applies, and the defendants other than Kissory Mohun Roy and Komal Coomary Dabee must be held liable for the acts of their agent."

The plaintiff obtained an ordinary mortgage decree for an account and sale, but no personal decree except as to costs, with liberty to apply for an order for sale of other property, the subject-matter of the suit.

Five of the defendants appealed. It was argued for the appellants that the order of the 6th May 1886 went beyond what the Court has power to do, and did not bind the shares of the defendants: that the Court could not interfere with the enjoyment of the other co-sharers, or place the whole of the joint estate out of which the plaintiff sought to have his share partitioned, in the hands of a receiver and give the receiver liberty to raise money on the security of the entire estate: that if all the co-sharers desire it, a receiver might be appointed in case of necessity.

The judgment of the Court of Appeal (Petheram, C.J., and Pigot, J.) was as follows:—

"This is an appeal by five out of a numerous body of defendants in an action brought to enforce a charge upon certain estates belonging to all the defendants jointly, and which the plaintiff contends was created by a deed, dated 13th May 1886, executed by Mr. Broughton in the character of receiver, he having been appointed receiver of all the estates in question by an order of this Court, dated 18th March 1886, made in two consolidated suits which were then pending between the various defendants to the present suit, for the partition of such estates, and who had by another order of this Court, dated 6th May 1886, been authorised to raise the sum of Rs. 50,600 on the security of the estates, which had been so placed in his hands for the purpose of paying the *putni* and *mourasi* rents which had fallen due on 1st May, 1886. Neither of the present appellants was seeking partition in either of the two consolidated suits, and the applications upon



which the orders in question were made were resisted by them and were made adversely to them, notwithstanding such resistance. The facts are not in dispute, and the questions which have been argued before us on this appeal are (1) whether the Court has jurisdiction to place the whole of a joint estate out of which a plaintiff seeks to have his share partitioned, in the hands of a receiver; and (2) whether it has any jurisdiction to order that a receiver so appointed shall be at liberty to raise money on the security of the whole of such joint estate. It is clear that if the Court had jurisdiction to make the orders, no question can be raised in this suit as to their correctness, they having been made by a Court of competent jurisdiction in the course of other proceedings and being now existing orders of such Court.

“The first question mainly depends on the meaning to be given to the words ‘property the subject of a suit’ in s. 503 of the Code of Civil Procedure, when the suit is one for the partition of a joint estate. Mr. Phillips for the appellants has contended that the sole purpose of such a suit being to give the plaintiff possession of a divided share, and for that purpose only to divide the joint property, the only property which is the subject of the suit is the plaintiff’s share, whether joint or divided, and that the Court has no jurisdiction to place anything more than that share in the hands of a receiver. For the plaintiff it was contended that the property in suit is the whole joint estate, inasmuch as until it has been partitioned the plaintiff has an interest in every portion of it. I think that the contention of the plaintiff must prevail, as not only is he interested in every portion of the joint property before it is partitioned, but by the partition the title of each of the joint owners is changed, the decree being carried out by mutual conveyances between the joint owners of the interest of the others in the several shares allotted to each. This view appears to be in accordance with the practice of this Court, as it seems that receivers of the entire joint estate have been appointed in partition-suits, and is also in accordance with the practice of the Court of Chancery in England acting under the Judicature Act, 1873, s. 25, sub-s. 8 [see *Porter v. Lopes*, (1)] and with the

---

(1) L. R. 7 Ch. D. 358.



practice of that Court before the passing of that Act [*Searle v. Smales*, (1)] even where there had been no exclusion.

“The second question depends on the meaning of s. 503, sub-section (d). By that sub-section the Court has powers to grant to a receiver such powers for the protection, preservation and improvement of the property as the owner himself has. It is, in my opinion, clear that when it is decided that the property in suit means the entire joint property, it follows that the words ‘the owner’ at the end of the sub-section must mean the whole body of owners to whom the joint estate belongs; and what we have to decide is, whether a power to raise money on the property itself *may* be necessary for its own preservation. In considering this question, we must have regard to the conditions under which estates are held in this country, one of which is that they are liable to be sold if the rents and revenue due upon them are not paid, and when that fact is appreciated, it is apparent that the power to take the estate out of the hands of the owners and to place it in the hands of a receiver with power to do what is necessary for its protection, must include a power to raise money to pay rent or revenue when it is necessary to do so; and to hold otherwise would be to hold that a receiver appointed to protect the estate could not interfere to prevent its being lost to the parties interested, although his appointment put it out of their power to protect it themselves. For these reasons I think that this suit was properly decreed, and this appeal must be dismissed with costs.(2)”

The Court has jurisdiction to appoint a receiver until the hearing of a partition-action or until further orders, even though there is no exclusive occupation by any party, and the Court will not hesitate to do so whenever it is just and convenient. The case for the appointment of a receiver is much stronger if a party to the partition-action is in sole occupation. In such a case any other party may obtain a receiver either of his share of the rents and profits or of the whole estate. The Court may also allow the

(1) 3 W. R. (Eng.), 437.

(2) *Poresh v. Omerto*, 17 C. 614.



party in exclusive occupation to elect to pay to the others an occupation-rent, or the Court may require security from the co-owners in exclusive occupation to account for their share of the rents to the other co-owners : *Held*, that in the circumstances of the present case the second of the four alternative courses, *viz.*, appointment of a receiver of the whole estate was the proper one to adopt.(1)

Thus the defendants in a suit for partition made an application to the Court touching the custody of the property the subject-matter of the suit. The Court thereupon directed that until the determination of the suit the plaintiffs should have the control and management of a portion of the property in suit, and the defendants of another portion : *Held*, that the order was a legal order and a proper order in the circumstances and not the less so because the Court had acted *suo motu*. The order practically amounted to one under O. XL, r. 1 of the Code of Civil Procedure, 1908.(2)

Where, in a suit for partition of joint-family property it was proved that a co-owner admittedly entitled to a half share in a considerable portion of the properties in suit was being kept out of possession by the co-owner, with the result that all supplies were cut off from his branch of the family : *Held*, that although no case of waste might have been established against the co-owner in possession the case was eminently a proper one for the appointment of a receiver.(3)

It may be observed that there is in general nothing peculiar in the nature of the various estates in real property which is sufficient to affect the discretion of the Court in appointing a receiver, but some of the authorities involving the estate of a life-tenant and in which the Court has interfered to protect that estate in favour of the remainder-man may be referred to here.(4) A mere intention to transfer by a life tenant does not constitute waste but may constitute a danger to reversionary interests calling for protection by appointment of a Receiver.(5) A Hindu widow should not ordinarily be displaced from possession.(6)

(1) *Suprasanna v. Upendra*, 18 C. W. N. 533 : 18 C. L. J. 638 : 22 I. C. 601.

(2) *Dan Prasad v. Gopi*, 36 All. 19 : 11 A. L. J. 973 : 22 I. C. 59.

(3) *Ramji v. Saligram*, 14 C. W. N. 248 : 14 C. L. J. 215 : 5 I. C. 96.

(4) Beach, § 488 ; Kerr, 84.

(5) *Ahmed Asmal v. Bai Bibi*, 44 B. 727 : 22 Bom. L. R. 826 : 57 I. C. 553 : 1920 B. 145. Cf. 1955 T-C. 134.

(6) 21 M. L. J. 821. For exceptional circumstances see 1910 M. W. N. 347.



Waste on the part of a Hindu widow in possession being proved, it is not competent to the Court to put the reversioner into possession assigning maintenance to the widow. A manager, who may be the reversioner if a fit person, should be appointed to the estate accountable to the Court.(1) Where the plaintiff sued to recover property in the possession of his adoptive mother and the suit was resisted *inter alia* on the ground that the defendant was entitled to retain possession of the estate during her life: *Held*, that O. XL, r. 1(2) which clearly refers to a case of removal of property from the possession or custody of a person other than the parties to the suit, was no bar to the appointment of a receiver on the application of plaintiff when it was established that the estate was being grossly mismanaged by the defendant.(2)

As it is not the province of the Court to create a co-partnership, so it is equally foreign from its functions to conduct its business. It never could have been contemplated that a Court of Chancery should become the superintendent of the private affairs of individuals. Its legitimate province is to adjust the rights and settle the disagreements of parties growing out of such transactions.(3) As a general rule, therefore, a receiver will not be appointed unless a dissolution of the partnership be sought,(4) though cases have arisen in which the Courts have appointed receivers though dissolution was not sought.(5) The Court does not, in general, interfere for the management of a partnership except as incidental to the object of the action to wind up the concern and divide the assets.(6) Were the Court to adopt any other rule, it might, in the language of Lord Eldon, make itself the manager of every trade in the Kingdom.(7) It is not the province of the Court to become the superintendent and

Partnership.

(1) *Maharani v. Nanda*, 1 B. L. R. A. C. J. 27 (1868); *Kunjammal v. Malayappa*, 1956 M. 409.

(2) *Satya Narain v. Keshabati*, 18 C. W. N. 537 : 25 I. C. 406.

(3) *Allen v. Hawley*, 6 Fla. 146 (Amer.), *per Dupont. J.*; High, § 480.

(4) High, § 509; Kerr, 87; *Goodman v. Whitcomb*, 1 J. & W. 589; *Hall v. Hall*, 3 Mac. & G. 79; *Roberts v. Eberhardt*, Kay, 148; *Radhakanta*

*v. Benode*, 1934 C. 444; *Bhagwan v. Radhika*, 1953 As. 25.

(5) See *Const v. Horris*, 1 Turn & R. 496, a peculiar case; Kerr, 89; High, § 513; *Hall v. Hall*, *supra* [threatened destruction of partnership concern or where the question was of receipt of money only]; *Medwin v. Ditchman*, 47 L. T. 250 [securing of property pending dispute between partners].

(6) *Waters v. Taylor*, 15 Ves. 13.

(7) *Goodman v. Whitcomb*, *supra*.



manager of the private business of litigants, but a receiver may be directed to continue the business a sufficient length of time to enable the Court to determine the rights of the parties litigants. While, therefore, the Court will not sanction the permanent or continued management of a partnership business in the hands of a receiver he may, in a proper case, be allowed to continue the management of the business pending legal proceedings for a dissolution in order that the goodwill may be preserved to the ultimate purchaser and its full value be realized by the partners at a final sale and to prevent great loss to the parties.(1) It is not necessary, however, in order to induce the Court to appoint a receiver that the action should expressly pray for a dissolution. It is enough that it be plain that it is necessary to put an end to the concern.(2) On the other hand, it is obvious that the mere fact that the action may pray a dissolution is not a sufficient ground for the appointment of a receiver. The rule may be stated in general terms that to warrant a receiver in partnership cases such a state of facts must be shown by the party complaining, as if proven at the hearing, will entitle him to a dissolution.(3) The doctrine is stated by Lord Eldon in *Goodman v. Whitcomb*,(4) as follows :—"This is a bill filed for the purpose of having a dissolution of the partnership declared, and if the Court can now see that that must be done, it follows very much, of course, that a receiver must be appointed. But if the case made stands in such a state that the Court cannot see whether it will be dissolved or not, it will not take into its own hands the conduct of a partnership which only may be dissolved. It may be a question whether the Court will not restrain a partner, if he has acted improperly, from doing certain acts in future, but if what he has done does not give the other party a right to have a dissolution of the partnership, what right has the Court to appoint a receiver and make itself the manager of every trade in the Kingdom?" The Court, therefore, will only act if it sees there is an actual present dissolution arising from the acts of the parties or that at the hearing it will dissolve the partnership.(5) Inasmuch,

(1) High, §§ 480, 481.

(2) Kerr, 86 *et seq.*

(3) *Smith v. Jeyes*, 4 Beav., 503 ;  
*Goodman v. Whitcomb*, 1 J. & W.

589 ; *Chapman v. Beach*, 1 J. & W.  
594 ; High, § 509.

(4) *Supra.*

(5) *Baxter v. West*, 28 L. J. Ch.  
169 ; Kerr, 88.



however, as the very basis of a partnership is the mutual confidence reposed in each other by the parties,(1) the Court will not, as a matter of course, appoint a receiver even where a case for dissolution is made. "I have frequently disavowed," said Lord Eldon,(2) "as a principle of this Court that a receiver is to be appointed *merely* on the ground of a dissolution of a partnership. There must be some breach of the duty of a partner or of the contract of partnership." When, however, in addition to the fact of a dissolution or right to dissolve some special ground is shown as that the member of the firm against whom a receiver is sought has done acts inconsistent with the duty of a partner and are of a nature to destroy mutual confidence : where there is misconduct forfeiting personal right of intervention in the partnership affairs, such as colluding with the debtors of the firm, carrying on separate trade on his own account with the partnership property, making away with assets, mismanagement endangering the whole concern, possible loss to partnership funds and generally if one of the partners has acted in a manner inconsistent with the duties and obligations which are implied in every partnership contract ; in all such cases a receiver will be appointed.(3) The unwillingness of the Court to appoint a receiver at the suit of one member of a firm against another being based on the confidence originally reposed in each other by the parties, the ground of the rule has no longer any place if it appears that the confidence has been misplaced as where a defendant by false and fraudulent representations induced the plaintiff to enter into partnership. There is also a case for a receiver even although there be no misconduct endangering the partnership assets if one partner excludes another partner from the management of the partnership affairs.(4) "The most prominent point," said Lord Eldon,(5) "in which the Court acts in appointing a receiver of a partnership concern is the circumstance of one partner having taken upon himself the power to exclude

(1) *Phillips v. Atkinson*, 2 Bro. C. C. 272 ; see *Peacock v. Peacock*, 16 Ves. 51.

(2) *Harding v. Glover*, 18 Ves. 281. 1953 Assam 25.

(3) Kerr, 89, 90 ; 1962 M. 458.

(4) Kerr, 91 ; Beach. § 573 ; *Ram v. Nethi* 1952 Hyd. 139 ; *Omar v. Razzak*, Pak. L. D. 1956 Sind 85 ;

*Dayabhai v. Natwarlal*, 1958 M. P. C. 269 : 1958 Jab., L. J. 118.

(5) *Const v. Harris*, 1 Turn. & Russ. 496 ; see also *Wilson v. Greenwood*, 1 Swanst. 481 : but partners may by contract provide for an exclusion in certain cases, *Blakeney v. Dufaur*, 15 Beav., 40 ; High. §§ 523—529.



another partner from as full a share in the management of the partnership as he who assumes that power himself enjoys."

To entitle the plaintiff to relief, the partnership must be established either by the admission of the defendant or other competent proof as otherwise the sole property of the defendant might be taken from him, his business broken up, while in the end it might appear that there was no right on the part of the plaintiff even to an account. The burden of proof rests, of course, upon the plaintiff. But it would be opening the door to a great deal of wrong to hold that by simply denying the existence of a partnership a party in possession can secure the rejection of an application. In other words, the mere denial by the defendant partner of the existence of a partnership is not sufficient to prevent the appointment when the Court is satisfied from the evidence in support of the application that the partnership relation exists.(1)

The doctrine relating to exclusion is acted upon where the defendant contends that the plaintiff is not a partner, or that he has no interest in the partnership assets.(2) Inasmuch as the Court will not appoint a receiver against a partner unless some special ground for doing so can be shown, it follows that in a firm of several members there is more difficulty in obtaining a receiver than in a firm of two. For the appointment of a receiver operating in fact as an injunction against the members, there must be some ground for excluding all who oppose the application. If the object is to exclude some or one only from intermeddling the appropriate remedy is rather by injunction than by a receiver.(3) The death or bankruptcy of one of the members of a firm is not of itself a ground for the appointment of a receiver as against the surviving or solvent partner or partners. In such case the right to wind up the concern is vested in the surviving or solvent partner or partners and before the Court will interfere, some breach or neglect of duty on their part must be established. But the representative of a deceased partner and the assignees of a bankrupt partner are not strictly partners with the surviving or solvent partner or partners. It is consequently a matter of course

---

(1) Beach, § 558 ; High. § 479 ;  
Kerr, 92.

(2) Kerr, *ib.*  
(3) Kerr, 92.



to appoint a receiver when all the partners are dead, and a suit is pending between their representatives or where such appointment is sought by a partner against the representatives or assignees in bankruptcy of his late co-partner.(1) If the partnership is already dissolved, the Court usually appoints a receiver as a matter of course.(2) The Court has jurisdiction to appoint a receiver of a partnership business with a view to selling the business as a going concern, notwithstanding that the partnership has expired in pursuance of a provision to that effect contained in the partnership-deed.(3)

Lord Langdale described the position of the Court in partnership cases as follows :—“Where an application is made for a receiver in partnership cases the Court is always placed in a position of very great difficulty ; on the one hand, if it grants the motion the effect of it is to put an end to the partnership which one of the parties claims a right to have continued ; and, on the other hand, if it refuses the motion, it leaves the defendant at liberty to go on with the partnership business at the risk, and probably at the great loss and prejudice of the dissenting party. Between these difficulties, it is not very easy to select the course which is best to be taken, but the Court is under the necessity of adopting some mode of proceedings to protect, according to the best view it can take of the matter, the interests of both parties.(4) In a suit for an account of a dissolved partnership a decree should, it was held, be passed under Civil Procedure Code, s. 215 of the last Code in accordance with form No. 132 in Schedule IV thereof ; and it should direct an account to be taken of the dealings and transactions between the parties and of the credits, property and effects due and belonging to the late partnership, and it should direct the appointment of a receiver of the outstanding debts and effects.”(5)

Assuming that the Court thinks fit to grant the application, it will appoint the Court Receiver or some other third party or

(1) Kerr. 84, 85 ; High, § 530 ; Beach, §§ 572, 581, and as to receiver appointed in interest of retiring partners v. *ib* § 580.

(2) *Pini v. Ronconi*, (1892). 1 Ch. 637 ; 1953 Assam 25.

(3) *Taylor v. Neate*, 39 Ch. D. 538.

(4) *Madgwich v. Wimble*, 6 Beav., 500.

(5) *Thirukumaresan v. Subaraya*, 20 M. 13. Observations on the procedure to be adopted and the burden of proof on the taking of the account.



more ordinarily one of the parties themselves to be the receiver. If the partner actually carrying on the business has not been guilty of such misconduct as to have rendered it unsafe to trust him, the Court generally appoints him receiver and manager with security, but without salary, or makes a reference to enquire who shall be appointed, leave being frequently given for each partner to propose himself. A partner who is appointed receiver becomes the officer of the Court and must be regarded accordingly ; but while his appointment protects his operations and gives him power to have recourse to the Court for assistance and advice, it does not enable him to do that which the existing agreements or conventions between the parties do not justify.(1) A partner who is appointed receiver of the partnership assets by the Court on the usual terms, is entitled to be paid his remuneration and costs as receiver out of the funds in his hands as receiver, although as a partner he is indebted to the partnership and is unable to pay what he owes.(2) But he cannot be sued for accounts by the other partners, though he is liable to the Court.(2a)

The first and principal duty of a receiver in these cases is, as in general in other cases, to collect and reduce to available funds the debts and effects of the partnership, and the partners may be compelled upon his motion to pay over collections made by them prior to his appointment.(3) Unless there be no necessity or it would occasion inconvenience, the order directs the other partners and all other parties to deliver over to the receiver all securities in their hands for such estate or property and also the stock-in-trade, and effects of the partnership, together with all notes and papers relating thereto.

A receiver may, by the order of his appointment, be directed to act personally in the business, to collect the debts and pay taxes and other charges and to sue in the name of the partners. Where one of the partners is appointed receiver and as such makes collections, he has no right to withhold them upon the ground that they are due to him personally inasmuch as such an act would be in violation of his trust. Where the Court has taken possession

(1) *Kerr*. 137, 138 ; High § 540.

(2) *Davy v. Scarth* [1906], 1 Ch.

(2a) *Kashl v. Kundan*, 1956 A. 660.

(3) *Beach*, § 585.



of property in litigation, and has continued its use for a considerable period, it may, at any time, refuse to go on with the business on account of the inconvenience and unfitness of such a proceeding and direct a sale.(1)

Where by a decree for dissolution of partnership a receiver was appointed and accounts and enquiries directed, it was held open to any creditor of the partnership to sue the partners and obtain a decree for the recovery of his debt, but no creditor, after the appointment of a receiver, could execute any decree, obtained after the appointment, to the prejudice of the other creditors of the partnership. To obtain satisfaction of his decree the creditor was bound to go to the Court which had appointed the receiver and take its directions. Where a partner paid off such a creditor's claim his right to recover the amounts he claimed from his co-partners depended, *firstly*, upon the result of the accounts as between him and his partners directed under the decree for dissolution; and, *secondly*, upon whether the creditor could under that decree and upon the accounts consequent upon it, claim more than a rateable share of his money advanced to the partnership, as against the other creditors, if any, of the partnership.(2)

When a partnership is dissolved by the Court, and a receiver and manager is appointed with a view to the sale of the business as a going concern, any deliberate act, whether by a partner, party to the action, or a stranger, calculated to destroy the value of property of the business, is an interference with the receiver and manager, and may be restrained as such even though not otherwise illegal, *e.g.*, tampering with the employees of the business and inducing them to give notice to leave, and to join a rival business, is an act of interference, although no breach of contract is instigated.(3)

As to the right of a receiver who has obtained an assignment of a judgment-debt to present a bankruptcy petition, see case below.(4)

(1) Beach, §§ 585—588. See High, §§ 538—552.

(2) *Shidlingappa v. Shankarappa*, 28 B. 176 : 5 Bom. L. R. 912.

(3) *Dixon v. Dixon*, [1904], 1 Ch. 161.

(4) *In re Macoun* (1904), 2 K. B. 700.



In many cases the appropriate relief will be rather by injunction than by receiver. It does not follow that because the Court refuses to appoint a receiver, it will also decline to interfere by injunction, or that because the Court will grant an injunction it will also appoint a receiver. The Court does not act upon the same principles in granting injunctions and receivers in these cases. For when the Court appoints a receiver of a partnership, it takes the affairs of the partnership out of the hands of all the partners and entrusts them to a manager of its own appointment; whereas in granting an injunction the Court does not take the affairs of the partnership into its own hands, but only restrains one or more of the partners from doing what may be complained of. The order for a receiver excludes all the partners from taking any part in the management of the concern; whereas the order for an injunction merely restrains one of the partners who may have acted in breach of the partnership articles, or may have otherwise misconducted himself from continuing to act in the way complained of.(1)

It was held that s. 483 of the last Code (see now O. XXXVIII, r. 6) which provided for the attachment of the property of the judgment-debtor, did not apply to the joint property of a partnership of which the judgment-debtor was a member. In such cases the proper order to make was the appointment of a receiver.(2) In a suit to wind up a partnership business brought against representatives of deceased partner it is necessary to join as party defendant a receiver appointed in another suit to take charge of the estate of the deceased.(3) The rule at common law that a solicitor is entitled to a lien for his costs on property recovered or preserved by his exertions has always been followed by this Court; and, where there are assets of a partnership in the hands of a receiver appointed in a partnership suit, the solicitors engaged in that suit are entitled to ask for a charge on those assets in priority to the creditors of the partnership. Where a plaintiff has obtained a decree against a partner-

(1) See Author's Law of Injunctions.

(2) *Damodar v. Panalal*, 9 Bom.

L. R. 540 (1907).

(3) *Zohra v. Zobeda*, 12 C. L. J. 368 : 7 I. C. 75.



ship firm, the available assets of which are in the hands of a receiver appointed in a previous partnership-suit, his proper course is not to issue execution against those assets, but to ask the Court for a charging order, and to undertake to deal with the charge according to the order of the Court.(1)

The appointment of receivers is frequently necessary in cases of trusts, either express or implied, as against trustees and persons occupying fiduciary relations. A large number of cases may be cited and digested under other titles which involve a receivership of trust-property. Such cases are properly here dealt with as illustrate or elucidate some phase or other of the subject as specially modified by the consideration that the property of which the receiver was appointed was property affected by a trust. So, strictly speaking, many of the cases in which relief is granted by appointing a receiver over corporations are dependent to a considerable degree upon the doctrine of trusts, the officers of a corporation occupying a fiduciary relation towards its share-holders and creditors, and the abuse of their trust constituting a frequent ground for interference. The subject is here considered in its application to cases of express trusts such as those created under wills, cases of executors and administrators of infancy and lunacy.(2) The jurisdiction is not, however, confined to cases of express trust. In the case of misconduct by trustees the Court will appoint a receiver as well where the trust arises by implication as where it is expressed. So where a testator had bequeathed the residue of his estate to his widow, stating in his will that he had done so "in perfect confidence that she will act up to those wishes which I have communicated to her in the ultimate disposal of my property after my decease," the Court being satisfied on the evidence that the bequest had been made on the faith of a promise made by her that she would dispose of the property in favour of the plaintiffs, the natural children of the testator, and that an implied trust was accordingly raised in their favour, granted a receiver of the estate on the death of the widow against the heir-at-law of the real estate and the second husband of the widow.(3)

Trusts.

(1) *Haji Ismail & Co. v. Rabiabai*,  
34 Bom. 484 : 4 I. C. 135.  
(2) High § 692 ; Beach, § 589.

(3) *Podmore v. Gunning*, 7 Sim.  
644 ; *Veeraraghava v. Krishna*, 20 M.  
L. J. 638 : 7 I. C. 900.



And where a tenant-for-life of leaseholds is bound to renew, he is in such case clothed with the character of a trustee ; and if by his threats or acts he manifests an intention to suffer the lease to expire, the Court will appoint a receiver in order to provide a fund for renewal.(1)

In general, it may be stated that the Courts are averse to the displacement by a receiver of a trustee under an express trust unless for good cause shown, the underlying principle being that the estate has been vested in the trustee by the creator of the trust, and it is for him to say in whom the administration of the trust shall be reposed. Even in the days of separate jurisdictions Courts of Equity were no more inclined to exercise their power, than in other cases, whereas in the case of trusts they had exclusive jurisdiction, it being held that there must appear the same substantial grounds for the exercise of the jurisdiction in these cases as in those in which the cause of action was one peculiarly at law. And this was held to be especially the rule in the case of express trusts on account of the confidence reposed by the donor in the trustee.(2) So, as a general rule, the poverty or insolvency of a trustee, specially if it existed at the time of the appointment, is not a ground for a receiver unless there be in addition thereto some danger or loss to the estate ;(3) for the creator of the trust selected his trustee with knowledge of such facts. But an actual adjudication presents much stronger ground for relief, and if a sole executor or trustee becomes bankrupt there is a case for the appointment of a receiver on the ground that there is no person to protect the assets, the assignees of the bankrupt having no power to interfere with the trust-estate.(4) On the same principle it is no sufficient ground that one of several trustees has disclaimed : for such disclaimer does not affect the estate of the others, and the creator of the trust must be presumed to know what the legal consequences of the death or disclaimer of some of them must be.(5)

(1) Kerr, 22 : see *Bennett v. Colley*, 2 M. & K. 233.

(2) Beach, § 589 ; *Shivaji v. Aiswarya*, 29 M. L. J. 209 : 29 I. C. 485.

(3) *Ib.* § 600 ; *Mahamad Askari v. Nisar Husain*, 43 A. 311 (1920) ; *Shivaji v. Aiswarya*, 29 M. L. J. 209 :

29 I. C. 485.

(4) High, § 711 ; Kerr, 19, *Steele v. Cobham*, L. R. 1 Ch. App. 325 : *Re Johnson*, 1 Ch. 325 ; *Re Hopkins*, 19 Ch. D. 61. See *Williams' Executors*, 11th Ed. 486.

(5) Kerr, 16.



Where, however, a proper case is shown to exist the Court will interfere. The general ground upon which a receiver is appointed in this class of cases is that the trust-estate is in danger because of the waste, misconduct or mismanagement of the trustee. A receiver will be granted if there is any danger of loss, improper disposition of assets, improper management, breach of trust, omission to perform, bias in favour of one of the contending parties, denial of the trust, refusal to pay and removal from the jurisdiction, fraud, refusal to act, unfitness, withholding of trust-funds ; where some of several trustees are acting separately and against a dissentient trustee ; where the trustees cannot act through disagreement and the like. But it is not sufficient that the trustees are poor or in mean circumstances, or that one of several trustees is inactive or has gone abroad.(1) So where land was devised to a trustee to hold and manage it, and to pay the rents and income to certain beneficiaries, the insolvency of the trustee and his misapplication of the proceeds of sales of the property and his failure to apply the income in accordance with the terms of the trust and his appropriation of such income to his own use was held to be ground for the appointment of a receiver in an action by the beneficiaries for an accounting.(2)

In general, it may be stated that while the Court will, in a proper case, dispossess a trustee of the trust-estate by appointing a receiver, it will not do so on slight grounds, it being for the creator of the trust and not for the Court to say in whom the trust for the administration of the property shall be reposed. A strong case must be made out to induce the Court to dispossess a trustee who is willing to act ; and if there be no danger to property, and no fact is in evidence to show the necessity of interfering by appointing a receiver, the Court will not appoint one. The application must be based upon an abuse of trust, or such conduct upon his part as leads to the conclusion that an abuse is imminent.(3)

A receiver may, of course, be appointed if all the *cestuis que trustent* and the trustee consent, or if one of several trustees disclaims and the other trustee consents.

---

(1) Kerr, 19. 20 ; High, §§ 694-697 ; Beach, §§ 589-593 ; *et ibi casas*. See *Institute Indo-Portuguese v. Dr. T. Borges*, 1959 B. 275.

(2) *Allbright v. Allbright*, 91 N. C. 220 (Amer.).

(3) Kerr, 15 ; Beach, § 597.



Trusts will not be allowed to fail for want of a trustee, and, consequently, if the nominee dies before qualifying or afterwards, the Court will appoint a trustee. Where a *Shebait* is dead and there is no provision in the deed of endowment about the mode in which the office is to be filled up, the Court will not read into the deed of endowment a provision for appointment to the office of *Shebait* which is not to be found therein. It becomes incumbent upon the representatives of the founders to make an appointment to the office of *Shebait*, and upon failure to do so the Court has power to appoint a new trustee, and will exercise this power whenever there is a failure of a suitable person to perform the trust either from original or supervenient disability to act. The appointment of a fit and proper person to be a new trustee is not a matter of arbitrary discretion of the Court. The appointment must be made subject to well-known and defined rules. Where a receiver appointed *pendente lite* was directed by the subordinate Judge to continue to manage the properties on the scheme laid down in the deed of endowment, pending an agreement between the parties to appoint a *Shebait*: *Held*, that the proper course to follow was, either to dismiss the suit, or, if the parties so desired, to appoint a *Shebait* and place the properties in his hands. This latter order could be properly made only after amendment of the prayer in the plaint.(1)

The same principles apply where application is made to appoint a receiver of property in the possession of an executor. The jurisdiction, though well established, is nevertheless exercised with caution, and the Courts are averse to granting relief, unless in pressing cases, since it is for the testator to say in whom the management of his estate shall be vested after his decease. The executor will not be displaced upon slight grounds, and a strong case must be made out to warrant the appointment of a receiver where the executor is willing to act. Where, however, the circumstances above mentioned exist such as would justify the appointment as against a trustee and where the abuse of trust is manifest, and it is plainly apparent that there has been serious waste and misappropriation of the funds, relief

Executors  
and Admi-  
nistrators.

---

(1) *Raj Krishna v. Bepin*. 40 C. 251 : 17 C. L. J. 189 : 18 I. C. 961.



will be granted ; especially is this true when the mismanagement is shown not in a single instance but from an habitual course of dealing, involving the property in danger. The Court in such cases treats an executor like any other trustee, and will take from his hands the management of the trust if he has been guilty of waste and gross mismanagement.(1) It is not sufficient that the executors are poor or in mean circumstances ; and though if a testator has selected an insolvent debtor as his executor with full knowledge of his insolvency, the Court will not on that bare fact alone interfere ;(2) yet bankruptcy of a sole executor is a ground ;(3) and it will not be inferred from the circumstances of the will having been made some time before the insolvency, and not altered afterwards, that the testator had a deliberate intention to entrust the management of his estate to an insolvent executor :(4) and the practice of not appointing a receiver where a testator has selected as his executor an insolvent debtor, with knowledge of his insolvency, has not gone so far as to permit a person against whom there is evidence of insolvency, to prevail against creditors claiming to have the property secured for their benefit, when it is not more than sufficient to pay them.(5) If a sole executor resides abroad or be abroad, and the beneficiaries are unable to obtain an account from the person left in control of the property during the executor's absence a case is made out for a receiver.(6) The principles governing these cases and the nature of the evidence required are clearly stated in the judgment of the Court in the case of *Haines v. Carpenter*(7) in which Woods, J., said :—

“The party in possession of the property for which a receiver is asked is the executor named in the will of the testatrix, who has

(1) High, §§ 706—708 ; Kerr, 16 ; *Hafiza v. Karim*, 19 B. 83, 85 ; *Surendra v. Sushil*, 55 C. 249.

(2) *Gladdon v. Stoneman*, 1 Madd. 143n ; *Stainton v. Carron Co.*, 18 Beav., 146, 161 ; High, § 709 ; the case is, however, different if an executor or administrator be proved to be of bad character, drunken habits and great poverty. *Everett v. Prythergh*, 12 Sim. 368.

(3) v. *ante*.

(4) High, § 711 ; *Langley v. Hawk*, 5 Madd. 46.

(5) *Oldfield v. Cobbett*, 4 L. J. Ch. N. J. 272.

(6) Kerr, 20 ; see as to the removal of an executor or the trust-estate from the jurisdiction, *Ex parte Galluchat*, 1 Hill Eq., 148 (Amer.), cited in High, § 712.

(7) 1 Woods, 262 (Amer.), cited in High, pp. 664, 665.



qualified in the Probate Court and given bond for the faithful discharge of his trust. Under these circumstances, the Court should not displace him upon light grounds. And though a suit be instituted by a party having an interest in the estate it does not follow that the trust created by the testator is to be set aside. A strong case must be made out to induce the Court to dispossess a trustee or executor who is willing to act. The grounds upon which this Court is asked to dispossess the executor and turn over the property of the succession to a trustee, are that Carpenter, the executor, is unfit and incompetent to manage and successfully control the estate ; that he has only cultivated a part of the land susceptible of cultivation, when, in the opinion of the complainants, all of it should have been cultivated ; that he is endeavouring to defeat the bequest to the said Baptist Church by depreciating the value of the estate, and that he is confederating with said E. I. S. D., to institute fictitious suits against the estate, in order to sweep away its assets. These charges are not directly made, but are stated on the information and belief of complainants, and they are not supported by a single affidavit to any fact. The application to appoint a receiver must be supported by evidence showing that the appointment is necessary. There is absolutely no testimony to support the application in this case. It is true that one of the complainants swears to the bill, but in doing so he only swears that he has been informed of and believes certain statements in his bill. This is not evidence, and gives no support to the application. The fact is that the Court is asked to appoint a receiver, in this case, on mere rumour, without any proof showing the necessity of the appointment. But even if the fact were established that the trust-property was in danger, that, of itself, would not be sufficient. It must be further shown that the party in possession is irresponsible. There is no proof that the executor is irresponsible, or his bond insufficient, nor is there any averment in the bill to that effect. The motion for a receiver must, therefore, be overruled."

The rules of the Court of Chancery adverted to have been held not to be applicable to the case of an executor of the will of a Mahomedan. In England, where those rules prevail a testator by his will disposes of what is absolutely his among the objects of



his bounty ; he has, therefore, a right to choose who shall distribute that bounty among those who can claim only under the will. But a Mahomedan testator cannot bequeath more than one-third of his property, in any case without the consent of his heirs, and the executor has not only to distribute that one-third among the legatees, but also the remaining two-thirds amongst the heirs who claim adversely to the will ; consequently there is not the same reason why the appointment by a Mahomedan testator of an executor should receive the same consideration as the appointment of an executor by an English testator does in England.(1)

In the same case it was held that a suit by the testator's widow for administration of the estate was sufficiently well constituted for the purpose of a motion for a receiver, although only the executor who had acted was made defendant, the other two executors not being parties to the suit. The Court, however, expressed no opinion as to whether it might not be necessary, or at any rate advisable, to add the other two executors as defendants before the suit came on for hearing.

The case of an administrator is different from that of an executor in that the latter is a person fixed upon by the testator himself, whereas the former is merely the next-of-kin or other person entitled in intestacy taking his grant from the Court. For these reasons the above-mentioned rules do not apply, and it is stated that at the instance of an administrator the Court does, upon a slight case, appoint a receiver.(2) It would be probably more correct to say that while in this, as in all other cases, sufficient ground for relief must be shown, yet the case which is required, is not the strong case which must be shown when the appointment is desired as against an executor.

The properties and interests of infants were under the peculiar and exclusive care of the Court of Chancery, it being a long-established rule that infants are to be favoured in Infancy. all things which are for their benefit, and not prejudiced by anything to their disadvantage.(3) The property of infants is gene-

(1) *Hafiza v. Karim* 19 B. 83. 85.  
See also *Emanjan v. Emanjan* 1927  
R. 135 : 100 I. C. 1020.

(2) *Bennett*, 33, but see *Beach*,

§ 596. *Official Assignee v. Hajee*  
11 Bur. L. T. 127 : 48 I. C. 152. Cf.  
*Jitendra v. Padam* 1953 P. 202.

(3) *Bennett*, 26.



rally vested in, or in the possession of, guardians and trustees. It has been held that guardians appointed by will under the Statute in that behalf are but trustees, and that if it appears that the estate of an infant is likely to suffer by the conduct of his guardian, the Court will interfere and appoint a receiver upon the same principles upon which it interferes in the case of trustees and executors.(1) The Court will, upon a proper case being made out, protect (even against the father if the latter be insolvent, or of bad character, or there be danger of loss) the estate of an infant by appointing a receiver and will consider chiefly what would be most beneficial to his interests. If there be no testamentary guardian, or the latter declines to act, a receiver will be appointed on a proper case being made out.(2) The appointment of receivers for the protection of the property rights of infants, as against executors or other persons occupying fiduciary relations towards the infant's estate, rests upon the general doctrine of trusts already discussed and is governed by the same general principles. The necessity of protecting an infant's property and estate, when it is not vested in a trustee, but is in the adverse possession of a person hostile to the infant's interests, may afford sufficient ground for the interference of equity by a receiver. So where an infant bought goods and mortgaged them to secure payment, and, upon default, the mortgagee took possession of them and also of other property which he was about to sell, a receiver was allowed the infant in an action to disaffirm the contract.(3) As regards the selection of a proper person to be appointed receiver, it is generally held that one who sustains a relation of trust towards the infant is ineligible as receiver, the two characters being incompatible.(4) The more usual course is to appoint a guardian of the person and estate without a receiver.(5)

It was formerly considered that in the case of infants the Court had jurisdiction on petition to pronounce an order for a receiver as well as for guardian and maintenance; but it was held by Lord Hardwicke that the Court had not jurisdiction to appoint

(1) *Duke of Beaufort v. Berty*,  
1 P. W., 704; Kerr. 14.

(2) Kerr, 14.

(3) High, §§ 725, 728; Beach,  
§ 598.

(4) *Sykes v. Hastings*, 11 Ves.,  
363; —v. *Jolland*, 8 Ves., 72  
(1802); High, § 729.

(5) Kerr, Ch. V.



a receiver unless a cause be depending(1) and the same rule exists under the Code. A receiver appointed for the protection of the estate of infants will not be discharged until the object of his appointment has been fully attained. Thus, as between tenants-in-common of real estate, two of whom are infants, when a receiver is appointed for the protection of the infants, with directions to pay to the adults their share, he will not be discharged upon the application of one of the infants on his coming of age, the other not yet having attained his majority.(2)

A receiver is sometimes necessary for the preservation of the estate of a lunatic. Though the jurisdiction is unquestioned, it is so seldom exercised that it is unnecessary here to do more than to refer to the authorities and cases dealing with the subject.(3) See also Indian Lunacy Act IV of 1912.

Lunacy.

§ 21. According to the English decisions if a right was asserted to property in the possession of the defendant claiming to hold under a legal title, the Courts did not interfere by appointing a receiver unless a very strong case was made out.

Cases of  
disputed  
title.

The Court of Chancery would not, at the instance of a person alleging a mere legal title against another party who was in possession of *real* estate (4) and who also claimed to hold by a like legal title, disturb that possession by appointing a receiver, but left the claimant to his remedy at law to have his title declared. The Court would not interfere with a legal title unless there was some equity, and unless in cases of absolute destruction, waste and imminent danger, or where the contest lay between a person having a clear title and one without any reasonable appearance of title and the like. It would, however, interfere if a good equitable case were made out; if it was satisfied that the relief prayed for would be given at the hearing; or if there was fraud, undue

(1) Bennett, 3; Ex parte Whitfield, 2 Atk., 315. See (3), p. 1.

(2) Smith v. Lyster, 4 Beav., 227; Bennett, 3.

(3) Kerr, 99—106; Beach, § 599; High §§ 733—736. Court may appoint receiver during inquisition proceeding: See Manilal v. Nepal,

22 C. W. N. 547: 27 C. L. J. 205.

(4) Though the Court would interfere to protect personal estate pending litigation as to probate, the case was different with real estate (Kerr, 99), a distinction which has no force as an arbitrary rule in this country; see Carrow v. Farrier, 3 Ch. App. 719.



influence, gross inadequacy of consideration, abuse of trust by trustees, executors and the like.(1)

The principles laid down by those decisions have been held applicable to this country in a case(2) which may be taken to be the leading one on this subject, and in which the judgment(3) of the Court (Macpherson and Gordon, JJ.) was as follows :—

“This is an appeal from an order of the Judge of the Assam Valley Districts appointing a receiver of a large property which is the subject of a pending suit. The plaintiff in this suit is a widow of the Rajah of Bijni, who died on the 9th of March 1883, and she claims the entire estate of the Rajah on the ground that the defendant, who claims to be the elder widow was not married to the Rajah, and that, even if she was married, she has forfeited her rights by unchastity both before and after the Rajah's death. She further, in the alternative, claims a moiety of the estate as co-heiress with the defendant or, should the defendant's exclusive title be established, that a suitable sum for her maintenance should be fixed and made a charge on the property. The appointment of a receiver is asked for on the ground that the defendant has grossly mismanaged the property, and has wasted, and would continue to waste, large sums of money. The defendant contends that she is and has been, since the Rajah's death, in exclusive possession of his property under a title admitted on more than one occasion by the plaintiff herself, that she was legally married to the Rajah, and as elder widow is his sole heiress, the estate being an impartible Raj to

(1) Kerr, 110, *et seq.*, and see *Talbot v. Hope Scott*, 4 K. & J., 96, a leading case; High, §§ 554, 557.

(2) *Sidheswari v. Abhoyeswari*, 15 C. 818, followed in *Chandidat v. Padmanand*, 22 C. 459, 464, 465; *Mathuria v. Shibdayal*, 14 C. W. N. 252. In *Sree Ram Das v. Mahabir Das*, 27 C. 279 (1899), the Court referring to the decision of Macpherson, J., sitting on the original side of the Court in *Sham Chand Giri v. Bhairam Pandey* (unreported), observed that the learned Judge in that decision seemed to

have taken a less strong view of what was necessary to justify an appointment than in the preceding case. See also *Prosonomoye v. Beni*, 5 A. 556, 561. The rule is not to displace a *bona fide* possessor from any of the just rights attached to his title unless there be some equitable ground for interference. See also *Gossain Dulmir v. Tekait*, 6 C. L. R. 467, 469 (1880); *Jamadar v. Kanai*, 41 C. W. N. 951.

(3) *Sidheswari v. Abhoyeswari*, *supra* at pp. 821, 823.



which the ordinary rules of the Hindu law of succession are inapplicable. It is further generally contended that the claim is not made *bona fide*, and that it has no substantial foundation.

"Now we must regard the defendant as in exclusive possession of the property claimed. She is the sole registered proprietor; and it is clear that ever since the Rajah's death, which occurred more than four years prior to the institution of the suit, she has put forward the title which she now asserts. It is admitted in the plaint that the defendant was allowed to assume the entire management, though the admission is qualified by the assertion that the management was understood to be on the plaintiff's behalf. With this and with the allegations of fraud and immorality we shall deal hereafter; it is enough now to say that on the facts before us we must consider that possession followed the management, and if the possession has been disturbed, the disturbance has been by the plaintiff.

"Both the Deputy Commissioner and the Judges seem to think that it is sufficient to justify the appointment of a receiver if the allegation of the plaintiff shows a sufficient cause of action, and if the management of the estate has been and is such as to render the appointment expedient. Section 503 of the Civil Procedure Code certainly gives a wide discretion to the Court. It empowers the Court to appoint a receiver whenever it appears to be necessary for the realization, preservation, or better custody or management of any property the subject of a suit. This power is not, however, greater than that exercised by the Courts in England; and it must, we think, be exercised on the same principle, that is to say, with a sound discretion on a view of the whole circumstances of the case, not merely the circumstances which might make the appointment expedient for the protection of the property, but all the circumstances connected with the right which is asserted and has to be established. If a right was asserted to property in the possession of the defendant claiming to hold under a legal title, the Courts did not interfere by appointing a receiver unless a very strong case was made out. The principles to which we refer are stated in *Kerr on Receivers*, (1) by Lord Cranworth in *Owen v. Homan*, (2)

(1) 8th Ed., p. 7.

(2) 4 H. L. C., 997, 1032.



[and in *Clayton v. The Attorney-General*.(1)]. We see no ground for the contention that those principles are not applicable in this country. They were adopted to prevent a wrong to the defendant which might equally be done here if they were not followed. It was indeed conceded that the plaintiff must at least show that her claim is honest and well-founded, and if she must show that much, it is a mere question of degree as to how far she must make out her case. Nor is there anything in Mr. Bose's argument that the principles referred to have been relaxed since the passing of the Judicature Act of 1873. It is only necessary to refer to the judgment of Brett, L. J., in *North London Railway Co. v. Great Northern Railway Co.*,(2) and the dicta of learned Judges in other cases therein referred to. Those were cases of injunctions ; but the words 'just or convenient', which limited the power of the Court, applied also to receivers."(3)

The Court then observed that it was necessary therefore to consider the circumstances under which the claim was made, the evidence by which it was supported and the conduct of the parties, and after a consideration of these and other facts in the case held that the order for a receiver ought not to have been made and set it aside and decreed the appeal.

In the decision in which the last case was referred to and followed, the Judges further observed that the lower Court did not appear to have kept in view the distinction which exists between the case of an injunction and that of a receiver. "That distinction," they said, "seems to be that, while in either case it must be shown that the property should be preserved from waste or alienation ; in the former case it would be sufficient if it be shown that the plaintiff in the suit has a fair question to raise as to the existence of the right alleged ; while in the latter case a good *prima facie* title has to be made out."(4)

It has been said that the principles referred to in the English decisions prior to the Judicature Act of 1873, have not been

(1) Cooper's Cases in Chancery, vol. I, p. 97.

(2) L. R., 11 Q. B. D., 30.

(3) *Sidheswari v. Abhoyeswari*, 15

C. 818 at pp. 821—823.

(4) *Chandidat v. Padmanund*, 22 C. 459 at p. 465 ; 1955 M. 571 ; 1958 Jab. L. J. 118 ; 1952 Ajm. 62.



relaxed since the passing of that Act,(1) but this, it is submitted, is not strictly and in all respects so. Though, as heretofore, a strong case will in general be required, the jurisdiction of the High Court has been so much enlarged by the Judicature Act that receivers will now be appointed on behalf of persons claiming against a legal title in cases in which the Court of Chancery could not have made the appointment.(2) What must be shown to obtain relief must of course differ in each case, but in England it must be shown that the appointment is "just or convenient" and in this country that it is "necessary" for the realization, preservation or better custody or management of the property, and the necessity will only exist where the applicant has a strong case or at any rate a good *prima facie* title to the property sought to be protected. [The language of the present Code—"just and convenient"—has been brought into line with the English law.—*Editor.*]

The discretion conferred upon a Court to appoint a receiver interferes to some extent with the sacrosanct position which heretofore the defendant in an ejectment action has occupied. The exercise of the discretion will practically in many instances compel the defendant to give up to some extent the advantages which he formerly possessed and to disclose that which he has been protected from disclosing *viz.*, his defence ; for it would be very difficult for the defendant resisting an application of this kind to keep silence as to his own title. But the Legislature must be taken to have contemplated the result that an application for a receiver may practically compel the defendant in an action of ejectment to disclose his title. The Court has a discretionary power to appoint a receiver whenever it appears to be just and convenient, and this power may be exercised where the plaintiff is seeking to recover land by a legal title ; the discretion must be exercised **with** a view to all the circumstances of the case. Among other things, it is important to bear in mind the position of the tenants, who, if the defendant is not a person of undoubted solvency and remains in receipt of the rents may be called upon to pay twice over if the plaintiff succeeds. The Court has also to consider the probability of the plaintiff's succeeding and the length of the defendant's possession, and whether he has any *prima facie* title ; where,

(1) *Sidheswari v. Abhoyeswari*,  
15 C. 818 at p. 823.

(2) Kerr, Ch. I., and cases there  
cited.



therefore, the plaintiff in an action of ejectment sought to recover land by a legal title, and the title of the defendant who was a person of small means appeared to be shadowy and the plaintiff's title appeared to be satisfactorily made out subject to a point on the construction of a will which the Court considered very unlikely to be decided against him, it was held that a receiver ought to be appointed.(1)

§ 22. The question of debt arising out of simple and other contracts will be found subsequently dealt with. Receivers will, when necessary, be appointed as between vendors and purchasers either in connection with proceedings to compel a specific performance or for the protection of the rights of a purchaser after sale. So the vendor of real estate upon a bill against the vendee for specific performance of the contract of purchase may have a receiver in aid of his action when it is shown that the defendant is insolvent and that all his property including the estate which is the subject of the contract is about to be conveyed to trustees for the benefit of his creditors.(2) So also when a person has contracted for the purchase of real estate, but is dissatisfied with the title and refuses on that ground to conclude the purchase, in an action against him to enforce specific performance, a receiver may be appointed for the management of the property pending a reference to determine the validity of the title.(3)

The relief in the class of cases under consideration is not confined to actions by the vendor, but the jurisdiction is also exercised on behalf of the vendee instituting such an action. And upon a bill by the vendee to compel specific performance of the contract of sale a receiver may be appointed to secure the property *pendente lite* when the vendor has fraudulently

(1) *John v. John*, L. R., 2 Ch. (1898), 573: *per* Collins, L. J., "it seems to me that the essential matter is what view the Court takes as to the probability of the plaintiff's success. We cannot decide the case now because it must be decided at the trial; but we ought not to avoid forming an opinion upon the materials before us, and I think that though the conclu-

sion is not final, it is a conclusion upon which we are bound to act;" referred to in *Sangappa v. Shivbasawa*, 24 B. 38.

(2) *Hall v. Jenkinson*, 2 Ves. and B., 125; see High. § 609, *et seq.*; Kerr, 82.

(3) *Boehm v. Wood*, 2 S. and W., 236.



re-possessed himself of the property.(1) Nor is the relief confined to cases of specific performance. Accordingly where on a bill impeaching a sale of land on the ground of fraud and alleging gross inadequacy of consideration and undue influence taken of the ignorance of the vendor, the Court being of opinion from the materials before it, that it was hardly possible the transaction could stand at the hearing, a receiver was appointed in a suit instituted against the devisees of the property charged with fraud.(2) And where it appeared that the defendants had obtained the conveyance of the legal estate from the plaintiff upon a strong suspicion of abused confidence a receiver was appointed.(3)

Where a party is clothed with title and possession by a lease in writing, and is in the enjoyment of rights apparently legal, a receiver will not be appointed unless under some urgent and peculiar circumstances, and the burden is upon the plaintiff to show a clear right in such a case or a *prima facie* right with such attending circumstances of danger or probable loss as will move the conscience of the Court to interfere. The mere fact of the difficulty of enforcing the ordinary legal remedies to compel the payment of rent due is not in itself a sufficient reason for appointing a receiver. A receiver will be appointed where the term has expired and the tenant who is insolvent withholds possession; and where a receiver has been appointed over a lease-hold interest and the term expires, it has been held that the landlord may re-enter into possession without first obtaining the leave of the Court.(4) Where a receiver is appointed in respect of lease-holds, upon him devolves the performance of the obligations imposed by the possession of land and therefore out of the sub-rents he must discharge the head-rents. A payment by him is equivalent to a payment by the owner himself.(5)

Leases.

The Court will interfere in cases between covenantor and covenantee and appoint a receiver where a fair *prima facie* case is made out for the specific performance of the covenant.(6) So where the defendant on an advance of money

Covenant.

(1) *Dawson v. Yates*, 1 Beav., 301.  
(2) *Stillwell v. Wilkins*, Jac., 282.  
(3) *Huguenin v. Basely*, 13 Ves., 107.

(4) *Beach*, § 496.  
(5) *Eastern Mortgage Co. v. Muhamad*, 52 C. 914 : 41 C. L. J. 571 : 1926 C. 385.  
(6) *Kerr*, 83.



being made to him, agreed to execute a mortgage of certain lands but afterwards refused to perform his agreement and there was an arrear of interest due on the money advanced, on bill for specific performance, the motion for a receiver was granted.(1)

Debtors may be general, that is, creditors having no right to resort to any particular property of their debtor for satisfaction of their claim; creditors having a right against some specific fund or estate; and Judgment-creditors. According to the majority of the decisions of the American Courts the jurisdiction will not be exercised in favour of mere general creditors whose rights rest only in contract and are not yet reduced to judgment and who have acquired no lien upon the property of the debtor. These Courts will not permit any interference with the right of a debtor to control his own property, at the suit of creditors who have acquired no lien thereon, it being held that whatever embarrassment a creditor may experience by reason of the slow procedure of Courts of law must be remedied by legislative and not by judicial authority. And while there are a few instances where the Courts have maintained a contrary doctrine, the great weight of authority supports the rule, that in the absence of statutory provisions to the contrary a general contract creditor before judgment is not entitled either to an injunction or a receiver against his debtor upon whose property he has acquired no lien.(2) See 'Suit for money' at p. 291.

As regards injunction, no doubt the ordinary rule is that pending a suit to enforce a general claim against a person, there cannot be an injunction to restrain him from parting or dealing with his property, not being property specifically in dispute in the suit;(3) when, however, such intended parting and dealing with property is not done in the *bona fide* exercise of ownership but with an intent to defraud persons, who, being creditors of the owner have or might have the right to resort to such property in satisfaction of their claim, there arises in their behalf an equity to restrain such threatened dealing with the property even as against its legal owner, and in this country an application may be made for an injunction under O. XXXIX, r. 1, or for an

(1) *Shakel v. Duke* 4 Mad, 463 : 1947 N. 28. Contra. 1926 M. 155.

(2) High, § 406, 1930 C. 610.

(3) See Author's Law of Injunctions, *Robinson v. Pickering*, 16 Ch. D., 606.



attachment before judgment under O. XXXVIII, r. 6, of the Civil Procedure Code. Nextly, as to receivers the Court has power under O. XL to appoint, as the English Courts have done,(1) a receiver at the suit of a general creditor over the property of a debtor provided that the existence be shown to the Court of circumstances creating the equity on which alone the jurisdiction arises. Though general creditors may, like specific appointees of property, have a receiver of the property of the debtor, a strong case must be made out to warrant the interference of the Court. The Court will not, unless a clear case be established, deprive a person of property in which the claimant has no specific claim, in order that if he establishes his claim as a creditor there may be assets wherewith to satisfy it. The chance of doing wrong to the defendant in such a case is certainly much greater and more apparent than when a right asserted is a right against some specific fund or estate.(2) The jurisdiction will probably be rarely exercised in these cases having regard further to the provisions of the Code relating to attachment before judgment and injunction already mentioned.

As regards the second class of creditors, the English authorities show that quite independently of the Judicature Act, 1873 if a plaintiff had a right to be paid out of a particular fund he could in equity obtain protection to prevent that fund from being dissipated so as to defeat his rights. He might not have had a specific charge on the fund so as to give priority, but it was settled that a person who had a right to be paid out of a particular fund could obtain an injunction, and if an injunction, it followed on principle that he could obtain a receiver in a proper case to protect the fund from being misapplied. The introduction of s. 25 of the Judicature Act did not curtail the power of the Court to grant injunction or to appoint receivers : it enlarged it. It has not revolutionised the law, but it has enabled the Court to grant injunctions and receivers in cases in which it used not to do so previously.(3) Creditors even before judgment may have such a special or equitable charge or lien upon the debtor's property

(1) Kerr, 46 ; High, § 418.

(2) *Owen v. Homan*, 4 H. L., 1036 ; Kerr, 46. *Chettiyar Firm v. U. Sin*, 1935 R. 398 (Commenting on *Dharendra v. Surendra*, 34

C. W. N. 440) ; *Kshitish v. Bengal Central Bank*, 1 D. R. 81.

(3) *Cummins v. Perkins*, 1 Ch. (1899), 16 : 29 : per Lindley, M. R



as to entitle them to a receiver.(1) If the real estates over which a receiver is sought are on mortgage, but the mortgagee is not in possession, a receiver will be appointed on the application of creditors without prejudice to the right of the mortgagee to take possession.(2)

Lastly, receivers were appointed in aid of judgment-creditors. In appointing a receiver in aid of a legal judgment for a legal debt, the Court of Chancery, it has been very commonly said, granted equitable execution. But the expression is not correct. The appointment of a receiver is not execution, but is equitable relief granted under circumstances which made it right that legal difficulties should be removed out of the creditor's way. What a judgment-creditor got by the appointment of a receiver was not execution but equitable relief which was granted on the ground that there was no remedy by execution at law: it was a taking out of the way a hindrance which prevented execution at law.(3) Receivers in aid of judgment-creditors' suits was one of the most important class of cases in which a receiver was appointed by Chancery. The fundamental principle upon which it rested was the inadequacy of the legal remedy and the consequent necessity for the aid of equity to supplement the remedy at law. A judgment-creditor who had sued out a writ of *elegit* or *fi-fa* on his judgment but found himself precluded from obtaining execution at law on the ground that the debtor had no lands, goods, or chattels out of which the judgment could be satisfied at law had a right to come to the Court of Chancery for the appointment of a receiver of the proceeds of the estate of the debtor which could be reached in equity. The Court before exercising the jurisdiction required to be satisfied of two things, first, that the plaintiff in the action had tried all he could to get satisfaction at law; and then, that the debtor was possessed of that particular interest which could not be attached at law. If there was a legal remedy the Court would not interfere. The Court would not appoint a receiver merely because under the circumstances of the case it would be a more convenient mode of

(1) High, § 408.

(2) *Bryan v. Cormick*, 1 Cox, 22; as to the rule when receivers are appointed at the suit of equitable

creditors, see *Davis v. Duke*, 2 Sw 137—138.

(3) *Re Shephard*, 43 Ch. D., 131.



obtaining satisfaction of a judgment than the usual modes of execution. Nor has the Judicature Act given any right to have a receiver appointed against the estate of a legal debtor where there is no difficulty in obtaining execution at law.(1) In this country where the Courts are both Courts of equity and common law equitable execution in the sense above indicated does not exist. The Courts may by the provisions of O. XL of the Code, however, appoint, a receiver of property under attachment in aid of the usual forms of execution prescribed by the Code.(2)

A receiver can be appointed under the Code in a suit to enforce a mortgage.(3) A mortgage-suit does not necessarily terminate with the sale and a receiver may be appointed after the sale pending application to set it aside.(4) The receiver, appointed in the course of a mortgage-suit, should ordinarily be an indifferent person between the parties to the suit, one who has no pecuniary interest of his own, which might conflict with the duties of his office. The propriety of appointing the mortgagee himself as receiver is extremely doubtful, and it would be prudent on the part of a plaintiff mortgagee if he does not accept the office of receiver. If, however, a plaintiff mortgagee accepts the office of receiver he is liable to account, and the sums, if any, received by him must be applied towards the discharge of the judgment-debt before he can obtain an order absolute for sale. If the mortgagee is himself the receiver, sums actually realised or which, with due diligence might have been realised by him, should be set off against the judgment-debt. In a mortgage-suit in which a receiver of rents and profits has been appointed, the judgment ought to direct that in taking the account the plaintiff should be charged with the amount (if anything) paid into Court by the receiver, and with such a sum as should be in the receiver's hands, at the

Mortgages.

(1) High, Ch. XII; Beach, Ch. XVII; Kerr, 46 *et seq.*

(2) See Chapter IV, *post.*

(3) *Ghanashyam v. Gobinda Moni*, 7 C. W. N. 452; *Ramkumar v. Chartered Bank* 41 C. L. J. 203; *Rameswar v. Chunnalal* 47 C. 418 (Property insufficient to pay incumbrances); *Biresh v. Sudhangshu* 1947 A. 157; *Rudreswari v. Ramabati* 1952 P. 231; *Vishwanath v. Kanak* 1952 M.-B. 136; for mort-

gagee in possession leasing back to mortgagor see 1955 M. B. 199; 1955 Ajm. 53, 1955 N. U. C. (Cal.) 5606, 1957 Jab. L. J. 901; as to making the receiver a party, see *Fraser v. Krishna Swami* 43 M. L. J. 211.

(4) *Madaneswar v. Mahamaya* 15 C. W. N. 672; 13 C. L. J. 487 (object and scope of appointment of receiver and common manager explained).



date of the certificate, and with such a sum (if any) as the plaintiff should submit to be charged with in respect of rents and profits to come into the receiver's hands prior to the order absolute.(1) The instances in which receivers have been appointed in case of mortgages may be divided into two classes, *viz.*, those in which the appointment has been made as between mortgagor and mortgagee, and those in which it has been made as between mortgagees. With regard to the first class the application may be made either by the mortgagor or the mortgagee.

Ordinarily there can be no question of an appointment of a receiver at the instance of a mortgagor who retains possession. There is, however, an early English case in which a receiver was appointed upon the application of one of several mortgagors, in order to keep down the interest on the mortgage, and this was done in the face of opposition by the mortgagee, who had not taken possession of the premises.(2) When a mortgagee has lawfully taken possession there must be, in order to authorise a Court to interfere, some equitable ground such as fraud or imminent danger to the property, mismanagement or the commission of waste or the like; and where all the mortgagee's doings are within the scope of his powers a receiver will not be appointed.(3) To justify an appointment of an *interim* receiver in a redemption-suit there must be strong evidence of imminent danger of the property being lost.(4) It may be generally stated that the possession of the mortgagee is not easily interfered with.(5) The appointment of a receiver is a matter entirely within the discretion of the Court, in the exercise of which it will be guided by a consideration of the circumstances of the particular case. The appointment of a receiver will be made almost as a matter of course in the case of an English mortgage on the application of a mortgagee if the interest payable under the security is in arrear.(6) Moreover, if the property mortgaged would be in danger if left in the possession of the mortgagors,

(1) *Shamuldhun v. Lakhiman*, 13 C. L. J. 459 : 6 I. C. 323.

(2) *Newman v. Newman* cited in 2 Bro. C. C., 92, n. 6.

(3) *Beach*, § 542 ; *High*, § 654.

(4) *Tribhoban v. Jamuna*, Bom. L. J. 184 (1889) ; see *Rash Behary*

*Ghose's Law of Mortgage*, 3rd Ed. 910.

(5) *Ib.* ; see also *Author's Law of Injunctions*.

(6) *Kameswar v. Anath* 42 C. W. N. 266, Cf. *Bachraj v. Ramprasad*, 1955 M.-B. 40 not following 1936 R. 290 ; 296.



a receiver should be appointed. Where under a trust-deed, the mortgaged properties were vested in trustees, but the estate they took was subject to mortgages, the trustees to continue in possession and manage the properties with a view to the liquidation of the mortgage-debt by periodical payments, and one of the trustees died and the surviving trustee was absent for a long period from the country, and the stipulations in the trust-deed were not carried out: *Held*, that the mortgagees were entitled to ask for the appointment of a receiver. Although the trust-deed was assented to by the mortgagees, it did not in any way abridge their statutory right to ask for the interference of the Court. The provisions of O. XL, r. cl. (2) did not stand in the way of the mortgagees, who were not bound to allow the arrangement to continue when its purpose had wholly failed.(1) When a mortgagee applies in his suit for appointment of a receiver, the primary question for consideration is, what steps should be taken to protect the mortgagee. Under the circumstances of the case, the receiver was directed to take possession only in the event if the mortgagors fail to carry out the undertaking to deposit the Government revenue, instalment by instalment, at least 7 days before the date fixed for the payment thereof.(2)

In a suit upon a mortgage, the mortgaged property was directed to be sold and the time of grace had expired. An application was then made by the judgment-debtor to the Court of execution for the appointment of a receiver under s. 503, both as regards the mortgaged property as well as other properties belonging to the judgment-debtor. *Held*, that the Court had no power to appoint a receiver of properties other than the subject-matter of the suit, and as regards the mortgaged property, a receiver could not be appointed on the mere ground that the property would not fetch so much by forced sale as it would by sale under a private contract.

In the judgment,(3) the Court after dealing with the question of jurisdiction observed as follows :—

Latafut Hos-  
sein v. Anunt  
Chowdhry.

“As all questions which arise in this proceeding have been argued, we think it would be better to dispose of the other ques-

(1) *Weatherall v. Eastern Mortgage Co.* 13 C. L. J. 495 : 9 I. C 985.

(2) *Gobind Rani v. Brinda* 23 C. L. J. 441.

(3) *Latafut v. Anunt* 23 C. 517,



tions. In the first place, this application, we think, must fail as being one with which s. 503 can have no concern. It is really an attempt made by the applicants to obtain all the benefits of the insolvency procedure of the Code without any of its burdens. They wish the Court to collect together all their property, wherever it may be found, and in as easy a manner to them as may be possible to liquidate their debts without reference to the urgency or otherwise of the claims of the debtors. They do not desire to place themselves in the position of being examined and having to prove the matters which ordinarily would give them a right to relief under the insolvency provisions of the Code. It is likely also that they are not desirous, although the nature of their application to us shows that they are insolvents, of being styled such. Moreover, it has not been shown to us how, even apart from the objection of jurisdiction and the objections to which we have referred, the order of the Court is in any way necessary for the realization, preservation or better custody or management of the property. As far as the mortgaged property is concerned, it is about to be realized in the way provided by law for that purpose. It is unnecessary to preserve this property, and with regard to its better custody or management, it is not established that it is likely to be injured at all. The only case made is that this is an old family ; and that, unless the Court steps in and saves them from their debts and the consequences of their debts, they may be ruined. It is not the business of the Courts, and they have no power whatever to act in cases of this kind where persons are unable to pay their debts. The remedy given is that given by the insolvency provisions of the law. This is enough to say with regard to appeal No. 111.

“As regards appeal No. 112 it appears that after the Judge had held that he had no jurisdiction, the parties applied to the subordinate judge in one of the mortgage-suits, asking him to appoint a receiver of the property, the subject of the mortgage, as well as of other property, not the subject of the mortgage. The learned subordinate judge on the merits refused this application, and we think he was right in so doing. In the first place, so far as the other property is concerned, it is clear that he had no power whatever to appoint a receiver of it and with regard to the mortgaged property there was no reason whatever why the mortgagee



should in any way be impeded in the execution of his decree. The property had been directed to be sold, the time of grace had expired, and there was no reason whatever, as far as we can see, why the mortgagee should not be entitled to have the property sold and the amount of his debt paid. Again, with regard to this application there is nothing in the words of s. 503 which could have any bearing upon it. It was not necessary for the realization of the property. The property was to be sold in the ordinary way. It might be that it fetched less than it would have fetched, if it had been sold by private contract; but it was to be sold in the best way the Court could sell it. If we were to assent to an application of this kind, the result would be that in any case a judgment-debtor could require that a decree be not executed in the manner provided by law, but that a receiver be appointed. There is nothing to distinguish this case from any other case, where the judgment-debtor says that a property will not fetch so much by a forced sale as it will by a sale under a private contract. We think that the lower Court was quite right in what it did, and that this appeal, like appeal No. 111, must be dismissed, but without costs."

The jurisdiction of equity by the appointment of receivers over mortgaged premises for the protection of mortgagees or in aid of actions for foreclosure or sale is well established. Under the former practice of the English Court of Chancery a distinction was always observed in the appointment of receivers between legal and equitable mortgages (all mortgages subsequent to the first being equitable mortgages), the former vesting the legal estate at once in the mortgagee with a right, as soon as the mortgage-debt is past due and unpaid, to enter into possession or bring an ejectment-suit to obtain possession, and the latter conveying no legal title but a mere equity. Under the old law before the Judicature Acts a mortgagee having the legal estate could not, except under special circumstances, obtain from the Court of Chancery the appointment of a receiver over the mortgaged property because he could take possession under his legal title. But since the Act the Court will appoint a receiver equally at the instance of either a legal or equitable mortgagee. This, it has been said, the Court does, not because the legal mortgagee has, in fact, less power than he formerly had to take possession, but because there is an obvious convenience in granting a receiver so as to



prevent a mortgagee from being in the unpleasant position(1) of a mortgagee in possession.(2) By means of the appointment of a receiver mortgagees are able to obtain the benefits of possession without its disadvantages. If a mortgagee voluntarily chooses to take possession he cannot give it up at his own pleasure, although the Court may relieve him in a proper case by the appointment of a receiver.(3)

With reference to the general question of the position of the holders of a mortgage in the English form of land belonging to natives in the mofussil as regards the appointment of receivers by the Court, it is to be observed that under the English practice before the Judicature Act of 1873, the Court of Chancery used to refuse to appoint a receiver on the application of a mortgagee, having the legal estate except under special circumstances for two reasons: (a) that being the owner in the eyes of the common law he could enter and eject the mortgagor without any process of law using reasonable force if necessary, and could maintain suits for rent as owner as if he were a purchaser or grantee of the property from the mortgagor, (b) because if he were evicted by the mortgagor in possession, he could obtain possession by an action of ejectment which would be practically undefended unless the execution of the deed were denied. On the other hand, the Court freely granted a receiver to equitable mortgagees if the interest were in arrear or the security insufficient, or in danger, almost as a matter of course.

But this view has never obtained in India at any rate since the fusion of law and equity on the establishment of the High Court in 1862 for the following reasons:—The Indian Courts hold, at any rate as regards mortgages other than English mortgages, that here there was no such thing as a bare legal estate carrying with it a right of possession by the common law subject to be restrained by a Court of Equity. They considered that there was only one ownership, that is, the beneficial ownership corresponding to an equitable ownership, and that whatever the form of the transaction was, the substance must be looked to and the mortgagor be regarded as owner and the mortgagee only as owner of an incum-

(1). See *Gaskell v. Gosling*, 1 Q. B. (1896), 669, 691.

(2) *Kerr*, 32; v. post. *Jaikissondas v. Zenabai*, 14 B. 431.

(3) *Re Prytherch* 42 Ch. D., 590; *County, etc., Bank v. Rudry, etc., Colliery*, 1 Ch. (1895), 629.



brance or lien on the property. The result was that it came to be regarded as doubtful by the legal profession whether a suit in ejectment would be at the instance of the holder of a mortgage in the English form, and they have always advised it was unsafe to file one. Further, it was the policy of the Indian law to discourage any attempt to enforce a claim of right to property by force or show of force (*see* Indian Penal Code, s. 143). This ejectment by reasonable force without process of law became illegal in India in many cases in which it was legal in England. The nett result was that the High Court treated all mortgagees as equitable mortgagees irrespective of whether the form of the deed would give them a legal estate according to English law and appointed receivers in mortgage cases without taking any heed of this distinction. By the Judicature Act, 1873, s. 25, sub-s. 8, the old English practice was swept away and power was given to the English High Court to appoint a receiver in all cases in which it might appear to the Court to be just or convenient, and it has been held that a receiver may now be appointed when the plaintiff is legal as well as equitable mortgagee(1) and a receiver has been appointed to relieve a mortgagee from the liabilities incurred by taking possession.(2)

When the mortgagor is the holder of the legal title and entitled to the possession of the mortgaged premises, his possession under the legal estate will not be disturbed except in a case of fraud or danger to the rights of the mortgagee if the estate is not taken under the protection of the Court. In general, it may be said to be the rule in these cases that a receiver will be appointed whenever it appears that the mortgagor is making such use of the premises as to impair the security and when the security is inadequate. This inadequacy may be either, *first*, the insufficiency of the mortgaged premises as a security for the mortgaged debt; or, *second*, the irresponsibility of the mortgagor or other person liable for the debt to pay any deficiency. The inadequacy of the security must be limited to the debt of the mortgagee making the application.(3) A mere default in payment

(1) *Pearce v. Fletcher*, 1 Ch. D., 273.

(2) *Mason v. Wessary*, 32 Ch. D., 206.

(3) *Beach*, § 519; *High*, § 639; *Manindra v. Sunitibala*, 95 I. C. 632: 1926 C. 1006.



of the debt constitutes no ground for the exercise of the jurisdiction unless there is a stipulation to that effect in the mortgage.(1) Mortgage-deeds in the English form, however, generally contain an appointment of, or a power for the mortgagee to appoint, a person to be the receiver of the mortgaged premises in order to secure the due payment of the interest; and under cl. (2), s. 6 of the Indian Act XVIII of 1866 which applies only to English mortgages a power to appoint a receiver can also be claimed by the mortgagee if it is not expressly negatives by the terms of the instrument.(2) But a private receiver deriving his power from the appointment of a mortgagee is almost unknown to Indian Courts or the Indian people, and in most cases at any rate in this country the appointment of a private receiver will not be so advantageous as that of a receiver appointed by the Court with the power of the Court behind him and the orders of the Court in his hands. A receiver may be appointed on the application of an equitable mortgagee in a foreclosure-suit or other suit for enforcing his security against the mortgagor in possession having the legal estate.(3)

In this country also the Courts have exercised the jurisdiction in aid of actions for foreclosure or sale brought by mortgagees.

In a suit by a mortgagee for foreclosure or sale in default of payment of his mortgage-debt the Court of first instance, when passing a decree for the plaintiff, refused, on the plaintiff's application, to appoint a receiver of the rents and profits of the mortgaged property. The plaintiff appealed against the latter absolute, and appointed a receiver until the hearing of the appeal, obtained a rule for the appointment of a receiver until the hearing of the appeal. The Court of Appeal after argument made the rule absolute, and appointed a receiver until the hearing of the appeal, and subsequently, when the appeal came on for hearing, varied the decree of the Court below by appointing a receiver of the mortgagd property. Upon the hearing of the rule it was objected that the plaintiff as the legal mortgagee of the property could

(1). See note (3) on p. 147 as to interest in arrear; Beach. § 519.

(2) See Rash Behary Ghose on

Mortgage, 3rd Ed., 603 *et seq.*  
(3) Kerr 39.



himself obtain possession and was not entitled to a receiver, but the Court (Sargent, C. J.) said :

“We think this rule must be made absolute. The question is, whether a receiver can be appointed upon an interlocutory application in a suit for foreclosure or sale of mortgaged property. No doubt under the old practice of the Court of Chancery it was not usual to do so, except under very special circumstances. But in England it appears that the practice has been altered since the passing of the Judicature Acts. In the *Anglo-Italian Bank v. Davies*(1) Jessel, M. R., says (page 286) : ‘Now, what has the Judicature Act done ? In the first place I think that the Act of 1873, s. 25, sub-section 8, has enlarged very much the powers which Courts of Equity formerly possessed of granting injunctions or receivers.’ The words are ‘A *mandamus* or an injunction may be granted or a receiver appointed by an interlocutory order’ of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made, and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just.’ Then it goes on : ‘If an injunction is asked either before, or at, or after, the hearing of any cause or matter to prevent any threatened or apprehended waste or trespass, it may be granted whether or not certain things have occurred which, prior’ to the passing of the Act, would in one alternative have prevented the Court from granting an injunction or receiver’.

Jaikissondas  
Gangadas v.  
Zena Bai.

“Cotton, L. J., says (p. 293) : ‘There is nothing whatever to prevent the Court from interposing on interlocutory motion. If there were any formal difficulty, in my opinion the Judicature Act, 1873, s. 25, sub-section 8, removes it. Under that sub-section the Court may and does grant receivers when it never could have done so before. Thus, for instance, it has power to grant a receiver under that section where a plaintiff has himself the power of obtaining possession at law.’

“We are of opinion that this Court possesses the same powers with regard to the appointment of a receiver as are possessed and exercised by the Courts in England under the

---

(1) L. R., 9 Ch. D., at p. 286.



Judicature Act, and we can see no reason why the practice in respect of these matters should not be the same. In the case of *In re Pope*,<sup>(1)</sup> Cotton, L. J., says: 'The practice of the Court as regards granting receivers was greatly altered by the 8th sub-section of the 25th section of the Act 1873: \* \* \* Since the passing of that Act it has been a usual practice for the Chancery Division to grant a receiver at the instance of a legal mortgagee just as it formerly did at the instance of an equitable mortgagee. Because, although a legal mortgagee has power to take possession, and can do so without the assistance of a Court of Equity, yet there are obvious conveniences in granting a receiver, so as to prevent a mortgagee from being in the very unpleasant position of a mortgagee in possession; and that has been constantly done. What the Court of Chancery did up to the time of the Judicature Act was that, when there was difficulty in the way of a judgment-creditor getting possession by process of law, and after he had tried to get possession by legal process, if he failed, then the Court interposed by granting a receiver, which was then considered and was in fact the proper course to adopt. But in my opinion, as this section enables the Court of Equity to depart from its former practice and to grant a receiver, not only where there is no power to take possession at law, but where there is power to interfere, if it is just or convenient that an order for a receiver shall be made, then, in my opinion, if it was just or convenient, the Court in this case had power to grant a receiver, though undoubtedly the judgment-creditor could by *elegit* have got possession.'

"Now in the present case we think it 'is just and convenient' that a receiver should be appointed. There are exceptional circumstances here. The mortgage-debt is for a very large amount. The value of the property is said to be insufficient to cover the debt, and there is a large sum owing for arrears of interest. It is, therefore, a case in which a receiver is desirable, and we think he ought to have been appointed by the decree made by the Court below." The rule was accordingly made absolute with costs.<sup>(2)</sup>

(1) L. R. 17 Q. B. D. at pp. 749.  
750.

(2) *Jaikissondas v. Zenabai*, 14 B.

431. See also *Appasami v. Jotha*,  
22 M. 448.



When a mortgage-deed provided for the appointment, at the instance of the mortgagees, of a receiver in circumstances specified in the deed and laid down the mode in which the rents and profits were to be distributed by the receiver, and in pursuance of these provisions a receiver was appointed with powers to dispose of the rents and profits in a certain manner in the course of a suit brought by the mortgagees to enforce the mortgage; but after a preliminary decree for sale had been passed in the suit, the Court upon the application of the judgment-debtor passed an order directing the receiver to pay certain sums to the judgment-debtor in order to enable him to prefer an appeal against the decree, *held*—that an appeal lay against the order under O. XLIII, r. 1, cl. (s) of Civil Procedure Code. That the receiver not having had power to make the payment in question either under the mortgage-deed or the terms of his appointment, the Subordinate Judge was wrong in making the order. The power given by Court to the receiver “to institute or defend suits regarding the properties whether for collection of rents or for any other purpose” or the provision in the mortgage-deed that pecuniary grants might be allowed for law expenses did not justify the orders of the Subordinate Judge for payment to the judgment-debtor until after sums had been deposited in Court sufficient to cover interest due on the mortgage-debt as required by the mortgage-deed and the terms of appointment of the receiver. The mortgagee in this case not having any payment as interest since the loan was made was entitled under the provisions of the law to apply for the appointment of a receiver pending the disposal of the suit.(1)

Though the appointment of a receiver *pendente lite* is a matter entirely within the discretion of the Court, it must in the exercise of that discretion be guided by the circumstances of each particular case; and it has been laid down as a general rule that the appointment of a receiver will be made as a matter of course on the application of a mortgagee if the interest payable under the security is in arrear. Where it appeared that the original mortgage-debt sued upon had trebled and no interest whatever had been paid to the mort-

---

(1) *Fakir v. Goolam*, 17 C. W. N. 16 : 17 I. C. 849.



gagees, and that on the other hand the mortgagees had been compelled to advance money to pay the Government revenue on the mortgaged properties in order to save them from sale for arrears and that to recover the sums so advanced they had been compelled to bring another suit: *Held*, that it was a fit case for the appointment of a receiver. As a general rule, the right to propose a person for appointment as receiver belongs to the party interested in obtaining the appointment and effect will be given to his nomination. But if the Court appoints a receiver at the instance of a mortgagee—the mortgagee not having, without the assistance of the Court, power to appoint a receiver—then the Court exercises its discretion as to who shall be appointed receiver and appoints the receiver whom, having regard to the interest of both mortgagee and mortgagor, the Court considers the best person.(1) S. 69A of the T. P. Act provides for appointment of a receiver by the mortgagee himself in certain cases. It was introduced by Act 20 of 1929.

When the security contains a power to the mortgagee to appoint a receiver the power can only be exercised in terms of the security, and if it is not exercised *bona fide*, the Court will interfere and appoint its own receiver.(2) It has been held that although a mortgagee may, under the Conveyancing Act, appoint a receiver without coming to the Court, it may be more desirable, where an action for foreclosure is pending that the appointment should be made by the Court.(3)

Nextly, as to receivers between first and junior mortgagees. According to the strict common law theory of a mortgage the mortgagee takes an estate subject to defeat upon the payment of the principal and interest when due; in default of payment the estate becomes absolute, and the mortgagee is entitled to possession either by entry or ejectment. In equity, the harshness of this rule was tempered by conferring upon the mortgagor for a fixed time after default the right of redemption. Accordingly, if the mortgagor had executed a second or other subsequent incumbrance, such later incumbrances were treated as equitable mortgages—a sort of lien cognizable only in a Court of Equity. This gave to the mortgagees under second mortgages the right to call upon the Chancellor for aid,

(1) *Eastern Mortgage Co. v. Rukea*, 16 C. W. N. 997.

(2) *Kerr*, 32 *et seq.*

(3) *Tillet v. Nixon*, 2 Ch. D., 238.



whenever their security was endangered by acts or defaults, either of the elder mortgagees or the mortgagor. The rule was therefore well established that until the first mortgagee took possession, equity could interfere in aid of subsequent incumbrancers and appoint a receiver(1)

At first it was held that this could not be done without the consent of the first mortgagee because the Court could not prevent him from bringing ejectment against the receiver as soon as he was appointed. But this was subsequently modified inasmuch as there was no reason, if the first mortgagee had not taken possession, why the Court should not appoint a receiver of the estate, the appointment being made without prejudice to his rights. If the mortgagee was not before the Court in the proceeding for the appointment of the receiver, he might apply for leave to bring ejectment, which was granted as of course. If the mortgagee would not take possession, a receiver was appointed without his consent. If care be taken that he is not prejudiced, he has nothing to do with the motion for a receiver. The Court will not allow him to object to the appointment by anything short of a personal assertion of his legal rights on taking possession himself. The only way in which the mortgagee can prevent the appointment is by taking possession.(2)

Where, however, the first mortgagee is in possession, the common law rule defining the rights of junior and senior mortgagees was stated by Lord Eldon to be as follows:—  
“If a man has a legal mortgage, he cannot have a receiver appointed; he has nothing to do but to take possession. If he has only an equitable mortgage that is, if there is a prior mortgagee, then if the prior mortgagee is not in possession, the other may have a receiver without prejudice to his taking possession; but if he is in possession you cannot come here for a receiver; you must redeem him and then in taking the accounts, he will not be allowed any sums that he may have paid over to the mortgagor after notice of the subsequent incumbrance.(3) The Court will, therefore, not appoint a

(1) Beach, § 547, *Dalmer v. Dashwood*, 2 Cox, 383, and other cases there cited; High, § 679.

(2) Beach, § 548.

(3) *Berney v. Sewell*, 1 J. & W. 647.



receiver at the instance of a second mortgagee or equitable encumbrancer against a prior legal mortgagee in possession as long as anything remains due to him on the mortgage-security. He is entitled to retain that possession until he is fully paid. So long as anything is due, in one case it was said if even a sixpence is due, the receiver will be refused. But it should clearly appear that something is due, and if the accounts of the mortgagee are so incomplete that he cannot determine definitely whether or not anything is due, the Court may assume that nothing is due. In other cases a receiver will not, in general, be appointed except upon an admission that he has been paid off or on his refusal to accept what is due to him. The rule applies equally whether the priority is original or has been acquired subsequently by an assignment of the mortgage, and it only applies as long as anything is due with reference to which the mortgagee has a right to retain possession. Although a receiver will not, as a general rule, be appointed, the Court may, if a case of gross mismanagement of the estate be made to appear, deprive a prior legal mortgagee of possession; but to warrant such an interference the mismanagement must be of a clear and specified nature.(1)

In a partition-suit between co-owners, a consent-decree was made. To give effect to that decree, a receiver was appointed. Certain properties, which included not merely the properties under the charge of the receiver, but also two other properties, were mortgaged. After an *ex parte* decree was obtained by the mortgagee an application was made for the appointment of a receiver in the mortgage-suit. *Held*, that a receiver might be appointed in the mortgage-suit, although a receiver was appointed in the partition-suit. The same person who was appointed receiver in the partition-suit might be appointed receiver in the mortgage-suit or different persons might be appointed. If different persons were appointed as receivers, the collection might be made by one of the receivers only (for instance, by the receiver in the partition suit), but the sums collected by him and payable to the mortgagor should be placed in the hands of the receiver in the mortgage-suit to

---

(1) Kerr, 39 *et seq.*; Beach, § 550.



be applied for the benefit of the mortgagee under the direction of the Judge. Where the mortgage-decree was for sale, and it was established that the security was not sufficient to satisfy the judgment-debt, a receiver would be appointed almost as a matter of course, especially if there has been default in the payment of interest. But where the mortgagee had obtained a decree for foreclosure, and no personal decree had been made, a receiver need not be appointed before the expiry of the period of grace, as the mortgagee was not entitled at that stage to the profits of the property, and did not allege that the property was in danger of being lost or wasted.(1)

The appointment of a receiver in a partition-suit amongst the mortgagors is no bar to the appointment of a receiver in a subsequent suit by the mortgagee on his mortgage, as any possible conflict between the two receivers, where the same receiver has not been appointed in both suits, may easily be avoided. A mortgagee who has obtained a preliminary decree for foreclosure cannot at that stage ask for a receiver of the property under mortgage, since he has no title to the profits until at least he obtains an order absolute for foreclosure and is then kept out of possession by the action of the judgment-debtors.(2)

The cases specifically dealt with in this Chapter are those of most frequent occurrence. Receivers have, however, been appointed in other cases as in that of <sup>Other cases.</sup> companies ;(3) corporations ;(4) interpleader-suits ;(5) arbitrations ;(6) litigation in a foreign Court ;(7) in aid of annuitants ;(8) and in other cases. In this connection it is to be observed that the jurisdiction is not limited by precedent, but is to be ascertained by reference to the provisions of the Code which state that in all cases in which it shall appear to be just and convenient, the Court may by order appoint a receiver.(9) Although the right of maintenance is not attach-

(1) *Khubsurat v. Saroda*, 14 C. L. J. 526 : 16 C. W. N. 126.

(2) *Khubsurat v. Saroda*, supra.

(3) *Kerr*, 74. *Sivaprakasa v. Samarapuri*, 1950 M. 116 ; 1956 Mys. 32, dissenting from 52 C. 513.

(4) *Gluck and Becker's Receivers of Corporation*.

(5) *Howell v. Dawson*, 13 Q. B. D. 67.

(6) *Kerr*, 95, 114.

(7) *Kerr*, 31, 97, 115 ; *Chandu v. Manik*, 55 B. 309 : 132 I. C. 512.

(8) *Beach*, § 487.

(9) *Civ. Pr. Code*, O. XL.



able a receiver may be appointed.(1) To avoid any difficulty in executing a decree for maintenance out of property charged with payment of the allowance and make a fresh suit unnecessary in case of default in payment of the instalments, a receiver should be appointed under the decree itself with directions, in case of default in payment of the maintenance, to take possession of the estate and sell the same, and out of the sale-proceeds to pay the allowance for maintenance.(2) Under the proviso to sub-section 1 of s. 91 of the Choto-Nagpur Tenancy Act (VI of 1908, of B. C.) the plaintiff cannot demand a prohibition of waste or damage, but merely the prohibition of the continuance of waste or damage already committed, nor can relief be granted under it by the appointment of receiver or the issue of a temporary injunction.(3)

§ 23. It cannot be assumed that there is a right of appeal in every matter which comes under the consideration of a Judge ; such right must be given by a statute or by some authority equivalent to a statute.(3a) Consequently, if the right of appeal is challenged, it is incumbent upon the appellant to establish the right of appeal. But unless the objection was obviously sound, the appellant could hardly be expected to answer by anticipation the grounds that might possibly be assigned by the respondent in support of the objection. The practice, therefore, usually followed in the Calcutta High Court, has been to require the respondent at the outset to indicate concisely the ground upon which his objection is based.(4) An appeal, it was held, lay from an order passed under s. 503 of the former Code appointing or refusing to appoint,(5) a receiver.(6) A Subordinate Judge under the last Code when considering the expediency of the appointment of a receiver acted under s. 503 of that Code as explained by

(1) *Rajindra v. Sundar*, 52 I. A. 262 : 30 C. W. N. 818 ; *Gauri v. Nilabati*, 1953 Or. 51.

(2) *Hemanginee v. Kumode*, 26 C. 441 : 3 C. W. N. 139.

(3) *Ram Narain v. Lachmi*, 17 C. W. N. 408 : 17 I. C. 490.

(3a) *Minakshi v. Subramaniya*, 14 I. A. 160 : 11 M. 26, 33.

(4) *Srinivash v. Kesho*, 14 C. L. J. 489 : 12 I. C. 745.

(5) *Venkatasami v. Stridavamma*, 10 M. 179 F. B. Overruling *Subramanya v. Appasami*, 6 M. 355 ; *Gossain Dulmir v. Tekait*, 6 C. L. R. 467 (1880) ; *Baidya Nath v. Makhan*, 17 C. 680. See also *Cursatji v. Gangaram*, 17 Bom. L. R. 680 : 30 I. C. 545 ; *Manindra v. Suniti*, 1926 C. 1006, 1961 Ker. 75.

(6) C. P. Code, O. XLIII. R. 1 (s) provides appeals from orders only under r. 1 or r. 4 of O. XL.



s. 505. When he did appoint, his order was passed under s. 503, and when he refused to take the necessary step preliminary to appointment, his order was also made under that section, and an appeal lay from such an order made by a Subordinate Judge.(1) An order made by a Subordinate Judge dismissing an application for the appointment of a receiver after obtaining sanction from the District Judge was held to be an order under s. 503 of the last Code and not under s. 505 ; and therefore appealable.(2)

Orders accepting receiver's accounts or directing him to execute lease are not appealable.(2a) So also an order delivering possession to the receiver. (2b).

No appeal lay from an order passed under s. 505 of that Code by a Court subordinate to a District Court, submitting the name of a person sought to be appointed a receiver, together with the grounds for the nomination, such being only a preliminary order or expression of opinion and not an order under s. 503. Nor did an appeal lie from the order of the District Court confirming such nomination.(3) While an appeal lay from an order rejecting an application for a receiver under s. 503, the order on appeal was final, and there was no second appeal.(4) Under the present Code power is given to subordinate Courts to appoint receivers directly and an appeal will lie in this case in the same way as in others.

A decision that it is just and convenient to appoint a receiver does not amount to an order appointing a receiver and no appeal lies against such order until a receiver is actually appointed, because it is possible that the final order appointing a receiver may never be made.(5) Likewise no appeal lies against an order appointing a receiver and directing him to furnish security, until the security is furnished,(5a) though such order is appealable under the Letters Patent.(5b) A final and not an interlocutory order appointing a receiver is appealable. No appeal lies until the final order is made.(6) It has however been held by the Full

(1) *Sangappa v. Shivbasawa*, 24 B. 38.

(2) *Gossain Dulmir v. Tekait*, 6 C. L. R. 467 (1880).

(2a) 1957 P. 16 ; 1960 Raj. 192.

(2b) 1963 A. 537.

(3) *Birajan v. Ram*, 7 C. 719 ; *Chunilal v. Sonibai*, 21 B. 328.

(4) *Baidyanath v. Makhan*, 17 C. 680. See also *Cheria v. Valia*, 1929 M. 20 ; 114 I. C. 839.

(5) 1934 N. 64 : 148 I. C. 184.

(5a) *Shyamlal v. Raj Kumar*, 31 C. W. N. 235 : 1927 C. 253 ; 1960 Ker. 57, But see 1963 A. 537.

(5b) *Arumugam v. Kannappa*, 5 R. 99 : 1927 R. 139.

(6) *Upendra v. Bhupendra*, 13 C. L. J. 157 dist. *Sripati v. Bibhuti*, 53 C. 319 ; *Srinivas v. Kesho*, 14 C. L. J. 489 ; *Mohendra v. Jiban*, Pak. L. D. 1955 Dacca 72 ; 1958 Assam 171 dissenting from 40 M. 18 F. B. ; 1960 Ker. 57. Cf. 1956 T. C. 264, Contra, 1963 A. 537.



Bench of the Madras High Court (Spencer, J., *contra*) that an order of a Court that a receiver should be appointed in a case without appointing anybody by name as receiver and adjourning the case to a later date for so appointing one is an order under O. XL, r. 1, and is appealable under O. XLIII, r. 1 (s), Civil Procedure Code (Act V of 1908). The majority of the Full Bench dissented from the last two decisions. *Per* Spencer, J., such an order is not appealable being only an interlocutory and not a final order. The test of whether an order is appealable is to see whether it completely disposes of the petition for appointing a receiver or not. If anything remains to be done in the petition, the order passed on it is not a final one and is not appealable.(1) An appeal lies against an order removing or refusing to remove a receiver already appointed,(2) or refusing to appoint one (2a). Where a Subordinate Judge made an order 'provisionally' appointing a receiver and called upon 'the parties to put in their claims regarding the person and power of the receiver, *held*,—that the order was not one appointing a receiver and no appeal lay against that order.(3) A pronouncement by the Court that a receiver should be appointed without however naming a specific person has been held to be appealable,(4) though the contrary view has been taken.(5) Where both the parties have agreed to the appointment of a receiver of the properties in dispute, and the Court has, in appointing the receiver, given him certain directions as to the disposal of the income, *held*, that an appeal lies from those directions by virtue of O. XLIII, r. 1 (s) of the Code of Civil procedure.(6) There is no appeal to His Majesty in Council against an order refusing the appointment of a receiver in a suit. Such order does not finally decide any matter which is directly at issue in the case in respect to the rights of the parties, and is not "final" within the meaning of clauses (a) and (b) of s. 595 of the last, and s. 109 of the present Civil Procedure Code and s. 39 of the

(1) *Palaniappa v. Palaniappa*, 40 M. 18. *Sripati v. Bibhuti*, 53 C. 319 (order removing Receiver).

(2) *Rayarappan v. Madhavi*, 1950 F. C. 140 (sets conflicting views at rest). But the receiver cannot appeal: *Manomohan v. Surendra*, 36 C. W. N. 903; 1933 C. 52.

(2a) 1961 Ker. 75 dissenting from 1947 P. 418.

(3) *Ramji v. Koman*, 13 All. L. J. 79; 27 I. C. 646; 1915 A. 129.

(4) *Palaniappa v. Palaniappa*, 40

M. 18 F. B. *per* Abdur Rahim & Srinivasa Iyengar, JJ.; 1934 L. 129; 1932 P. 360.

(5) *Ib.* *per* Spencer, J.; *Gopalrao v. Devidas*, 1938 N. 540; *Phani v. Nalini*, 67 C. L. J. 107; *Kshitish v. Janaki*, 35 C. W. N. 1141; *Mohendra v. Rasik*, 6 D. R. 50.

(6) *Mohunt Anund v. Ram*, 14 C. W. N. 183. *Contra*. *Ajit v. Yamuna*, 1953 Raj. 121 (conferment of power is distinct from order or direction).



Letters Patent; nor is the matter a special case falling within the terms of clause (c) of s. 595 of the former Code or s. 40 of the Letters Patent.(1) A 'final order' within the meaning of cl. (a) of s. 109 of the Civil Procedure Code of 1908, means an order which finally decides any matter directly at issue in the case in respect of the rights of the parties. An order appointing a receiver is not an order of this description. Section 109, cl. (c) of the Civil Procedure Code of 1908 covers special cases, such, for example as those in which the point in dispute is not measurable by money, though it may be of great public or private importance. To certify that a case is of that kind, though it is left entirely in the discretion of the Court, is a judicial process which cannot be performed without special exercise of that discretion, evinced by a fitting certificate. Where the question in controversy was whether a receiver should or should not be appointed in respect of the subject-matter of the litigation, and the Courts took divergent views upon the matter, certificate as to the fitness of the case for appeal to His Majesty in Council was refused.(2) Where a receiver is appointed by a writ and an appeal is preferred against the appointment the appellate Court may either stop the issue of the writ pending the appeal or, if the writ has been issued, direct the receiver through the Court which appointed him not to take any steps in compliance with the writ of appointment.(3) Upon an appeal the Court is bound to consider not only whether a receiver should have been appointed but also whether a suitable person has been selected.(4) See also as to appeal last paragraph.

An order under O. 40, R. 1 in execution proceedings is appealable but not as a decree.(5) So there is no second appeal.(6) An order removing a third person from possession is one under cl. (b); so he can appeal.(7) An order being a "judgment" is appealable under the Letters Patent.(8) If an *ex parte* order is confirmed by a second order, appeal lies only from the latter.(9) Pending an appeal the appellate court may direct the receiver not to take any steps.(10)

(1) *Chundi v. Pudmanand*, 22 C. 928; *Benoy v. Satish*, 55 I. A. 131: 32 C. W. N. 681.

(2) *Mahomed. Musaji v. Ahmed Musaji*, 13 C. L. J. 507; 10 I. C. 439.

(3) *Mulchand v. Tarini*, (1920) Pat. H. C. 40: 54 I. C. 222.

(4) *Srinivas v. Kesho*, 14 C. L. J. 489: 12 I. C. 745.

(5) *Attah v. Bala*, 1927 L. 190.

(6) *Cheria v. Valia*, 1929 M. 20.

(7) *Hudson v. Morgan*, 36 C. 713.

(8) *Arumugan v. Kanappa*, 5 R. 99; *Paramasivan v. Ramasami*, 56 M. 915 F. B.; *Ali Ismail v. Momina* 55 C. W. N. 135. Cf. *Kuppusami v. Rathnavelu*, 24 M. 511; *Vishnu v. Ravati*, 1953 A. 647.

(9) 40 C. 862. But see 1938 L. 102.

(10) 1920 P. 567.



## CHAPTER IV

### RECEIVERS OF PROPERTY UNDER ATTACHMENT

§ 24. Receivers of attached property. § 25. When and how appointed.  
§ 26. Power and duties of receivers. § 27. Removal of receiver.

§ 24. With regard to managers or receivers of attached property s. 243 of the Civil Procedure Code of 1859 (Act VIII of 1859) contained the following provisions :—  
Receivers of attached property.

“When the property attached shall consist of debts due to the party who may be answerable for the amount of the decree, or of any lands, houses, or other immovable property, it shall be competent to the Court to appoint a manager of the said property, with power to sue for the debts, and to collect the rents or other receipts and profits of the land or other immovable property, and to execute such deeds or instruments in writing as may be necessary for the purpose, and to pay and apply such rents, profits, or receipts towards the payment of the amount of the decree and costs ; or, when the property attached shall consist of land, if the judgment-debtor can satisfy the Court that there is reasonable ground to believe that the amount of the judgment may be raised by the mortgage of the land, or by letting it on lease, or by disposing by private sale of a portion of the land, or of any other property belonging to the judgment-debtor, it shall be competent to the Court, on the application of the judgment-debtor, to postpone the sale for such period as it may think proper to enable the judgment-debtor to raise the amount. In any case. in which a manager shall be appointed under this section, such manager shall be bound to render due and proper account of his receipts and disbursements from time to time as the Court may direct.”

Chapter XXXII of the Code of 1877 (Act X of 1877) supplied the place both of the last mentioned section as also the 92nd section of the Code of 1859 dealing with receivers of property in dispute in a suit and going



further gave the Court very general powers as to the appointment of receivers. The provisions in the Code of 1877 were identical with those of the last Code save that in the last Code the words "as the Court thinks fit" in s. 503, cl. (d), were inserted after the word "remuneration," and the consent of the Collector was required to his appointment under s. 504.

Section 503 of the last Code ran as follows :—

"Whenever it appears to the Court to be necessary for the realization, preservation, or better custody or management of any property, movable or immovable, the subject of a suit, *or under attachment*, the Court may by order

(a) appoint a receiver of such property, and, if need be,

(b) remove the person in whose possession or custody the property may be from the possession or custody thereof ;

(c) commit the same to the custody or management of such receiver ; and

(d) grant to such receiver such fee or commission on the rents and profits of the property by way of remuneration, and all such powers as to bringing and defending suits, and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has, or such of those powers as the Court thinks fit.

Every receiver so appointed shall

(e) give such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property ;

(f) pass his accounts at such periods and in such form as the Court directs ;

(g) pay the balance due from him thereon as the Court directs ; and

(h) be responsible for any loss occasioned to the property by his wilful defaults or gross negligence.

Nothing in this section authorizes the Court to remove from the possession or custody of property under attachment any person whom the parties to the suit, or some or one of them, have or has not a present right so to remove."



A manager might be appointed by the Court without the consent of the decree-holder. The Court had no power to order that the manager should, out of the proceeds of the estate, satisfy the claims of persons other than decree-holders.(1)

The words of the present Code are that the Court may appoint "a receiver of *any* property whether *before or after* decree." The words "*subject of a suit or under attachment*" have been omitted. [So a receiver may be appointed even in a money suit or before attachment]. But the wider words employed still permit of the appointment of receivers of property under attachment.

Section 51 of the Civil Procedure Code is to be read with r. 11 of O. XXI and r. 1 of O. XL. When a Court appoints a receiver for purposes of execution of a decree the order is one under r. 1 of O. XL read with s. 51 of the Code.(2)

§ 25. The appointment of a receiver by the Court at the instance of a judgment-creditor is a process of execution known in England as equitable execution being a process of execution enforced by the Court at the instance of a judgment-creditor.(3) Inasmuch as however the term arises out of the dual jurisdiction of the Courts of Common Law and Chancery, it has no real applicability to the similar remedy in this country. In England when a person had obtained a judgment, the natural course was to take the ordinary legal process by writ of *elegit*; but there might be difficulties which prevented him from getting the land delivered in execution under the *elegit*. Where therefore, there was a judgment, which owing to legal impediments could not be enforced at law, he came into equity for what was called equitable execution; that is to say, to have the lands delivered to him in execution in equity when he would have got them at law in the ordinary process, but for certain difficulties existing. He accordingly filed a bill in equity asking

(1) *Thakoor Chunder v. Chowdry Chotee*, 1 Marshall R. 261 (1863).

(2) *Srinivash v. Kesho*, 14 C. L. J. 489.

(3) *Fink v. Maharaj*, 26 C. 772. See *ante*, Ch. III, "Debtor and Creditor." See *Lloyd's Bank, Ltd. v. Medway Upper Navigation Co.*,

L. R. (1905), 2 K. B., 1905; *Goldschmidt v. Oberrheinische Metal Werke* (1906), 1 K. B., 373. The Court will not in such cases stop short of granting whatever injunction is necessary, *Ideal Bedding Co., Ltd. v. Holland* (1907), 2 Ch. 157, 170.



for payment of the judgment-debt by means of a receiver.(1) It is obvious, therefore, that the proceeding under the Code has, beyond the fact that a receiver is appointed, nothing in common with what was technically styled "equitable execution." Under the Code the appointment of a receiver is but one of the various proceedings relating to execution which are governed by one and the same law administered by Courts which are both Courts of Equity and Common law. Such appointment is resorted to not because of any legal hindrance to execution, but because it is the best means available under the particular circumstances of the case to give effect to and secure the rights of the judgment-creditor and judgment-debtor respectively. Not being a matter of right it is justified if O. 40, r. 1 would justify it.(1a)

A judgment does not vest in a judgment-creditor any portion of the property of his judgment-debtor. It gives him the right to have the judgment executed, but until execution the property of the judgment-debtor does not vest in the judgment-creditor simply by virtue of the judgment. In the undermentioned case the appellant, having obtained a decree for money, sued to recover the unsatisfied balance thereof from the respondents alleging that the property of the deceased judgment-debtor (being one-seventh share in the legacy of his father) was in their possession. He prayed that after due enquiry, adjustment of accounts and the determination of the value of the said legacy out of the share which might be found due to the judgment-debtor, the above-mentioned balance might be decreed with interests and costs. *Held*, that the decree did not vest in the appellant a right to the property sued for, and consequently that he could not maintain this suit. The proper mode of enforcing a decree is that pointed out by the Code of Civil Procedure, namely, by execution and sale, or by execution and attachment, and the appointment of a receiver to collect the property. Where the legislature has prescribed a particular mode of enforcing a right created by a decree, the possessor of that right is bound to follow the procedure prescribed and no other.(2) The Court cannot make an order

---

(1) *Anglo-Italian Bank v. Davies*,  
L. R., 9 Ch. D., 283, 290 (1878).  
(1a) *Hemendra v. Prakash*, 59 C.  
205 : 35 C. W. N. 1066.

(2) *Mirza Mahomed Aga v. Widow of Balmakund*, 2 I. A. 241  
(1876) : 26 W. R. 82 P. C.



to continue an attachment so as to provide for money not actually due, the right to attachment being only for sums actually due.(1)

When a manager is appointed, the appointment is made after hearing the arguments on both sides, and the appointment is generally considered one which, although made primarily in the interest of the debtor, is likewise in the interest of all parties concerned.(2) In some cases it may be as much to the interest of the judgment-creditor as to that of the debtor as in cases where there are incumbrances affecting the property, or numerous creditors or an immediate sale is not possible, or, if possible, cannot be effected except at a sacrifice of the property unless, as often happens, it is the object of the creditor to obtain possession of the property of his debtor below its real value. The application may be made either by the judgment-creditor or debtor. It is entirely discretionary with a Court to appoint a receiver and to allow a debt to be paid by degrees.(3) In considering whether execution should proceed in the ordinary course or whether a receiver should be appointed to discharge the debt from the profits of the property, the Court will use its discretion having regard to all the circumstances of the case. It will see whether the amount due under the decree is likely to be realized within a reasonable time from the profits of the attached property, hearing the objections of the decree-holder where he does not assent to this course. The fact of a manager having been appointed to realize the profits of a property with a view to satisfying certain decrees, even though the appointment should have been confirmed by the High Court, is no bar to a Judge on the application of another decree-holder, enquiring into the state of the property and passing proper orders and should he find that the proceeds are insufficient to satisfy all the decrees within a reasonable time, causing the decree to be executed in the usual way.(4) And when a Judge on the death of a manager reviewed the progress made and finding that under such management the decree was not likely to be satisfied for a very long time, directed execu-

(1) *Ramdhan v. Koilas*, 12 W. R. 457; 4 B. L. R., A. C., 20 (1869).

(2) *Huree Sunkur v. Jogindro*, 19 W. R. 66 (1873).

(3) *Din Dyal v. Ram Ruttun*, 16 W. R. 46 (1871); *v. post*.

(4) *Brojender v. Kanwar*, 1 W. R. Misc., 15 (1864).



tion to proceed against the estate, it was held that his discretion had been properly exercised.(1) Where reference was made to a circular order in which the Court stated that two or three years should ordinarily be the limit for which a property should be put under the charge of a manager, the Court stated as follows :—"The Court does not, I apprehend, intend by these words to limit the time strictly to that period in all cases, but requires thereby that in each case the Judge who directs the appointment of a manager should exercise a proper discretion with reference to all the circumstances of the case in calculating the time in which the debts may be paid off. If after a year or two, it appears that the collections are insufficient to meet the claims of the creditors, there is no reason why an application should not be made to the Court for the removal of the manager and the sale of the property."(2)

In the undermentioned suit numerous decrees had been obtained against the defendants, part of whose property consisted of a village which was attached in 1859. The village was under the management of the Collector whom the Courts below treated as a manager put in under s. 243 of the Code of 1859. The decree-holders received rateable shares in the nett income of the village in liquidation of their respective decrees. It appeared that it would taken fifteen years to pay off the various decree-holders. The petitioner applied to the Civil Court for an attachment of the village in execution of his decree. The application was refused on the ground that the village was already under attachment in satisfaction of other decrees. Upon appeal, the High Court ordered a sale of the village, the sale-proceeds to be dealt with in accordance with the proper provisions of the Code, on the ground that it could never have been intended to give the Civil Courts for an indefinite length of time, the management of the encumbered estates of the country or to compel decree-holders to submit to such an unreasonable delay as fifteen or twenty years before

---

(1) *Doorga Dutt v. Bunwaree*, 25 W. R. 33 (1876).

(2) *Bunwaree v. Girdharee*, 16 W. R. 273. 274 (1821). See also

observations in *Huree Sunkur v. Jagendro*, 22 W. R. 220 (1874) : *Hemendra v. Prokash*, 59 C. 205 : 35 C. W. N. 1066, 1071.



obtaining satisfaction of their decree.(1) Where a Subordinate Judge was of opinion that an application for the appointment of a manager was made only to put off payment of the debt, the High Court held he was not wrong in exercising his discretion, and refusing to appoint a manager.(2) A Court executing a decree was held to have been justified in refusing to appoint a manager for attached property belonging to the judgment-debtor, where it would have taken 20 years to pay off the debt from the profits of the property. But the High Court saw no objection to the appointment of a manager to dispose of portions of the property by sale, mortgage and otherwise if the debt could thereby be cleared off in six months.(3) A Court cannot refuse to order attachment on application of a decree-holder ; nor can it appoint a manager until after attachment, the Code assuming that the property has already been attached. After, however, an attachment has been made according to law, the Court may proceed either to order the sale of the property or to appoint a manager or receiver for the purpose of liquidating the debt, should that be considered to be the best course both for the creditor and for the debtor.(4) Attachments are not superseded by the appointment of a manager. The object of the appointment is for the protection of the estate consistently with the security of creditors, and it would place the creditors in an exceedingly unsafe position if the appointment of a manager had the effect of entirely destroying that security.(5) The proceeding does not change the property in the subject which is attached and affected by it. The manager appointed, so far as he is an officer of the Court, is at most the hand of the

---

(1) *Rednum v. Khaja Mahomed*, 5 Mad. H. C. R. 272 (1870). In this case the attachment and management of the estate had already been under the care of the Courts for more than ten years. In *Mohunt Ram Rucha v. Doorga*, 13 W. R. 453 (1870), the lower Court considered six years a reasonable period. As to however the powers of management under the present Code, *v. post*.

(2) *Ootum v. Ram Sarun*, 23 W. R. 287 (1875).

(3) *Mohinee v. Ram*, 15 W. R. 322 (1871). See these old cases discussed in *Hemendra v. Prokash*, 35 C. W. N. 1066, 1071.

(4) *Bunwaree v. Girdharee*, 16 W. R. 273 (1871). N.B.—Attachment is not now a pre-requisite.

(5) *Mohabeer v. Collector of Tirhoot*, 13 W. R. 423 (1870); *Bunwari v. Mohabir*, 12 B. L. R. 297 (1873) : 1 I. A. 89, 95; *Lakshmi v. Amar*, 41 C. W. N. 1074.



Court for the purpose of carrying out of the provisions of the Code.(1)

There is nothing in the Code to prevent property which has been once attached from being afterwards attached by a judgment-creditor in another suit if only this can be done before it has been sold by order to Court and so the judgment-debtor divested of all rights to it. The fact that property under attachment is in the hands of a manager or receiver does not protect it from attachment of all other creditors.(2) A manager may be appointed by the Court without the consent of the decree-holder. He is, however, appointed for the purpose of recovering sums due under judicial awards, and claims which are not based on such awards cannot be allowed to be realized by a manager to the prejudice of the decree-holders for whose benefit alone the manager is appointed and who in law are entitled to be first paid. The Court has no power to order that the manager should, out of the proceeds of the estate, satisfy the claims of persons other than decree-holders.(3) Where a judgment-debtor asks that a manager be appointed, he must show that the circumstances are such that the order for which he applies would be a reasonable and proper one. He should not only show what is the income of the particular property and the amount due under the decree but he should also show whether that income is unincumbered, and if incumbered, to what extent. He cannot ask the Court to make an order under this section with respect to one single property before disclosing the whole state of his affairs, the extent of his liabilities and the means of meeting them.(4) The fact of the judgment-debtor possessing properties other than the one attached is no ground for rejecting an application for the appointment of a manager. To save a particular property from sale a judgment-debtor must show the value and condition of other properties in his or her possession, and the Judge must consider how and by what arrangement such a disposal of different portions of such property may be

(1) *John Tiel & Co. v. Abdool Hye*, 19 W. R. 37. 38 (1873).

(2) *Ibid.*

(3) *Thakoor Chunder v. Chow-*

*dhry Chotee*, 1 Marshall R. 261 (1863).

(4) *Dinobundhoo Singh v. Macnaghten*, 2 C. L. R. 185 (1878).



made so as to avoid the sale of the property already attached.(1) Where a decree for a bond-debt contained a clause to the effect that if the money due was not paid the property pledged in the bond might be sold, the clause was construed to mean that the property was liable for the debt decreed. *Held*, also, that the decree-holder could get at the property only in execution of the decree, in which case he would be in the position of any other judgment-creditor and be bound by the provisions of the Civil Procedure Code, and the judgment-debtor would be entitled to the benefit of s. 243 relating to the appointment of a manager of attached property.(2) Under the Code of 1859 the Court might postpone the sale of property on being satisfied that there was reasonable ground to believe that the amount of the judgment might be raised in the manner there stated. This provision was held, however, not to authorize the postponement of the sale of attached property for one year, security being given for the payment of the debt within that time.(3) Under the same Code it was held that where a Deputy Collector executes a decree against a party holding another decree from his own Court, he ought, instead of selling that other decree, to appoint a manager to realize the judgment-debt due thereon.(4)

In the case undermentioned an application was made in Chambers for the appointment of a receiver for the purpose of realizing certain moneys in execution of a decree. The plaintiff had obtained a decree against the defendant and in execution of that decree obtained an order under s. 268, Civil Procedure Code (now O. XX, r. 46) and restraining the defendant until the further order of the Court from receiving from the Chief Auditor, East Indian Railway Company, a moiety of his salary with exchange compensation allowance for each and every month, commencing from the date of the order, and the Chief Auditor from making payment of those sums to any person whomsoever. On the 24th August 1900, the plaintiff obtained an order that the Chief Auditor should be at liberty to pay into Court the moneys attached under

(1) *Debkumari v. Ram Lal*, 3 B. L. R. App. 107 (1869).

(3) *Fyz-ood-deen v. Giraudh Singh*, 2 N.-W. P. 1 (1870).

(2) *Mohunt Ram Rucha v. Doorga Datt*, 13 W. R. 453 (1870).

(4) *Ram Chunder v. Ram Churn*, 9 W. R. 372 (1868).



the previous order, but the Chief Auditor in the exercise of his discretion under the last paragraph of s. 268, declined to pay the money into Court. Upon the attorney for the plaintiff applying for the appointment of a receiver under the Code (now O. XL, rr. 1-3), contending that that was the only course left open to him to realise the money, and it was the usual course followed in such cases, the Court observed that the appointment of a receiver would be a heavy burden on the defendant, and asked whether there was any precedent. It was thereupon pointed out that in the case of *Girdharilal Dhunmia v. Jogeshur Roy and others* (unreported) a receiver was appointed by Sale, J., under similar circumstances upon which the Court granted the application.(1)

Assets realized by the appointment of a receiver after decree are assets realized by a process of execution provided for by the Code. Rents of property under attachment realized by a receiver appointed at the instance of a decree-holder were held to be assets realized by "sale or otherwise in execution of a decree" within the meaning of s. 295 of the last Code (now s. 73). That section provides for a rateable distribution of the assets amongst the decree-holders. But no creditor who obtains an attachment order subsequent to the realization by the receiver is entitled to participate, as it is only decree-holders who have applied to the Court for execution of their decrees prior to the realization who are comprehended in that section.(2)

The rents and profits of a Ghatwali tenure may be attached in execution of a decree in the life-time of the Ghatwal though the estate itself cannot be attached. Where the Lower Court in execution of a decree against the Ghatwal attached the Ghatwali estate, placed it under a receiver and directed the tenants not to pay rents to anybody other than the receiver, *held*, that although the order of attachment of the estate was erroneous, the appointment of a receiver was sanctioned by authority. *Quære*, whether a receiver may be appointed to collect rents and profits that have not accrued at the date of appointment.(3)

(1) *Umbica v. A. C. Meik*, 5 C. W. N. xxii.

(2) *Fink v. Maharaj Bahadoor*, 26 C. 772 : 4 C. W. N. 27.

(3) *Keshabati v. Mohan*, 16 C. W. N. 802 : 39 C. 1010 : 14 I. C. 227. See *Wasif Ali v. Kernani Bank*, 58 I. A. 215 : 35 C. W. N. 791.



Powers and  
duties of the  
Receiver.

§ 26. The position of the manager under s. 243 of the Code of 1859 was stated in a judgment from which the following passage is taken :

“It is to be observed, as we understand this section, that this proceeding does not change the property in the subject which is attached and affected by it. It seems to us that the manager so appointed by the Court, so far as he is an officer of the Court, is at most the hand of the Court for the purpose of gathering in, on behalf of the judgment-debtor, the moneys due to him, in order that they may be immediately applied to the satisfaction of the decree, *i.e.*, to the discharge of the judgment-debt. If the manager so appointed affects to do more than this and deals with the subject of property itself—if for instance he carries on such a concern as this Seetulpore indigo concern and works it as a proprietor would work it,—he must do so, in our opinion, as the agent of the judgment-debtor, and not properly as an officer of the Court. We need hardly here remark that on the Original Side of this Court, a question has been lately considered and discussed at some length as to what are the proper functions, and what is the true *status*, of a receiver appointed by the Court in a civil suit, with the object of preserving property and of keeping it within reach of the Court until a final decree can be made between the parties. We may, however, say, we consider it to be quite settled that the receiver, even in that case, can but exercise at the utmost such powers and rights over the property as the parties to the suit turn out to be possessed of when those rights are finally determined. He does not, as seems sometimes to be imagined, in some mysterious way, represent the Court itself and by virtue of its authority, override the parties and all the world besides. We do not know whether it has even been held that the District Courts of this country have the authority to appoint a receiver of such a character as that which we have just mentioned ; probably they would be held to have it, if it should become necessary in order completely to administer within their jurisdiction to make such an appointment. But we do not at this moment remember any case in which such an appointment has been made, and we believe that at any rate such cases, if they have occurred, are exceedingly rare. But however this may be, the manager, who



has been appointed by the Judge's Court in the present matter now before us, does not trace his authority to any general powers of the Court. He is certainly nothing other than such an officer as the Court is expressly authorized to appoint by s. 243, and it appears to us that the purpose of that section, so far as concerns the appointment of a manager, is limited to the *collection* of moneys and money profits which may be due to the judgment-debtor. As we have already said, we are very strongly of opinion that it never was the intention of the Legislature, when it used the words of the first part of that section, to give a Court power to take the property of judgment-debtors into its own hands, and to *manage* it as of its own authority during a course of years for the benefit of certain favoured judgment-creditors to the exclusion of all others. We think that if the Legislature had entertained the intention to confer such an extraordinary power, it would have expressed it clearly, and would have taken care to hedge the gift about with qualifications which are, as it seems to us, absolutely necessary to prevent the exercise of it from leading to very great mischief indeed." (1)

In *Moran v. Mittu Bibee*, (2) in which case a manager of an indigo concern mortgaged the property, Phear, J., after citing s. 243 of the Code then in force, said :—

"It seems to me that the Legislature did not intend by thus using the word 'manager' to imply by the force of that word alone that the person appointed should have power to manage and carry on the property, whatever its nature, in respect of which he is appointed : I think that the word is a mere designation of a person, whose power is specified in the following sentence, namely, with power to sue for the debts, and to collect the rents and other receipts and profits of the land or other immovable property, and to execute such deeds or instruments in writing as may be necessary for the purpose, and to pay and apply such rents, profits, or receipts towards payment of the amount of the decree and costs. The same word 'manager' is thus used in reference to cases where obviously there could be nothing to manage, and where the person appointed could be nothing more

---

(1) *John Tiel & Co v. Abdool Hye*, 19 W. R. 37, 38 (1872), per Phear, J.

(2) 2 C. 72 (1876).



than a receiver, as to others ; and in the powers expressly attributed to him there is nothing which could enable him to carry on any business, or to raise money for that or any other purpose. He appears to be even narrowly restricted in regard to the application of the rents and profits which he may collect, *i.e.*, to paying them towards the amount of the decree and costs. It is also not unimportant to remark that in the immediately following passage of the same section the Legislature employs express words to authorize the Court to raise money, by means short of selling the land, for the purpose of discharging the judgment-debt ; if it had intended to give the manager or even the Court a like power for the purpose of merely managing the property or carrying on a business concern, with a view to discharging the judgment-debt out of the profits, it surely would have conferred the power expressly among the other powers mentioned and would not have let it simply lurk under cover of the name 'manager.' The last words of the section : 'In any case in which a manager shall be appointed under this section, such manager shall be bound to render due and proper accounts of his receipts and disbursements from time to time as the Court may direct' do not enlarge the passage which I have quoted, because a mere receiver must or may, have to disburse money in the course of collecting rents and profits and suing for debts, &c. On the Whole, I feel bound to say that we cannot find in s. 243 any legislative authority given to the Court to appoint a manager to carry on a judgment-debtor's business pending execution-proceedings, and to invest him with power to raise money for that purpose, although I am aware that a practice of this kind has, on some ground or another, become very prevalent. And I need hardly add that if a manager appointed under s. 243 has not in himself any statutable authority to carry on and manage a business or other property, he certainly has no authority to hypothecate, produce, &c., for expenditure to that end. I do not know whether it has been decided to what extent that Civil Courts of the Mofussil have the power such as that possessed by the Court of Chancery at home, and by this Court, of managing this property of parties to a cause, pending suit or administration ; or if so, whether their power in this respect arises in proceedings had solely for the purpose of enforcing execution of a decree. But however this may be, the Court's manager, under such circumstances, only acquires a



right to charge his costs and expenditure against the parties to the suit, or persons who have knowingly placed themselves in a like position relative to his management, and even then he can only do so in respect of such expenditure as has been expressly sanctioned by the Court. The ground of his right is that he is the Court's officer acting under the Court's discretion as between the parties to the suit and with the Court's sanction which cannot, of course, be rightly given without specific inquiry in each matter requiring sanction; the exercise of the Court's discretion cannot be delegated to the manager by anticipation."(1)

As will, however, be observed from the terms of the last and present Code the scope of the powers and duties of receivers of attached property are wider under the present than under the Code of 1859 under which the decision last cited was given. The Court may commit the property to the custody or management of the receiver who may be given not only all such powers as to *collection* of rents and profits, and execution of instruments and bringing and defending suits, but also all such powers for *realization, management, protection and preservation and improvement* of the property as the owner himself has or such of those powers as the Court thinks fit.(2)

The provisions of s. 503 of the last Code were, it was held, intended to declare that the receiver in respect of all property which was or could be attached had the powers of the owners as they existed at the time the property was brought under the orders of the Court, provided they have not ceased by operation of law.(3) "Powers of the owner" referred to in that section must, it was held, be read in connection with the other provisions of the Code such as those prohibiting alienation after attachment to the prejudice of a decree-holder. In the last-mentioned case a zemindar in 1879 granted a lease of part of the zemindary for twenty years reserving a rent of Rs. 18,000 per annum. In 1881, the zemindary having been attached by a creditor, the zemindar

(1) *Moran v. Mithu*, 2 C. 72 to 74.  
(2) Civ. Pro. Code, s. 503; now

O. XL, rr. 1-3.

(3) *Gopalasami v. Sankara*, 8 M. 418.



granted a new lease in perpetuity in lieu of the former lease, reserving a rent of Rs. 12,000 a year. A receiver of the zemindary, having subsequently been appointed with full powers under the provisions of s. 503 of the last Code, sued the lessee to recover rent at the rate reserved in the first lease from 1881. The lessee did not deny liability to pay the reduced rent, but asserted that rent could not be recovered under the first lease, inasmuch as the receiver had the powers of the owner, and as the owner would be bound by the second lease, the receiver was bound by it. Upon the principle, however, above stated it was held that the receiver was entitled to recover the rent claimed.(1)

In execution of a decree an order was made by the Court directing the payment of the rents of certain property, which had been attached, as they became due from the *mukuraridar* to the judgment-debtors, to be made to the decree-holder to satisfy his decree; and afterwards the execution-case was struck off the file. Subsequently, default having been made by the *mukuraridar* in the payment of the rents of certain years and the decree not having been fully satisfied, the decree-holder applied for an order directing the payment of the rents which were in arrear to be made by the *mukuraridar* in accordance with the previous order. Notice having been directed to be served on the judgment-debtors, they came in and pleaded limitation. *Held*, that as the application was not strictly one for fresh execution, limitation could not apply, and that as the effect of the order in the execution-proceedings was virtually to appoint the decree-holder receiver, and as the attachment was still in force, his proper course was to file a regular suit *qua* receiver against the *mukuraridar*.(2)

When a debt from a third person to the judgment-debtor is attached in the hands of the person who owes it, the Court may, if necessary, appoint a manager to sue for it.(3) A receiver appointed in execution may sue for any debts attached;(4) in the

(1) *Gopalasami v. Sankara*, 8 M. 418.

(2) *Radha Kissors v. Aftab*, 7 C. 61 distinguishing *Hurronath v. Chuni*, 4 C. 877.

(3) *Rambutty v. Ramessur*, 22 W. R. 36 (1874); *Reazat v. Juganath*, 21 W. R. 419 (1874).

(4) *Ib*,



terms however, only of the order appointing him ;(1) or for contribution on contract ;(2) or for the property of the judgment-debtor.(3)

A receiver cannot waive any right to recover what may be legally claimable, without the sanction of the Court, of which he is an officer.(4)

When a debt alleged to be due by a third party to a judgment-debtor has been attached by the judgment-creditor, the Court may, under s. 268 (now O. XXI, r. 46), Civil Procedure Code, make an order upon the garnishee for the payment of such debt to the judgment-creditor in case the former admit it to be due or for so much as he admits to be due to the judgment-debtor. Where, however, the garnishee denies the debt, there is no other course open to the judgment-creditor than to have it sold or to have a receiver appointed under O. XL.(5)

*Held*, that a Court executing a simple money-decree obtained against a sonless separated Hindu was not competent to appoint a receiver of the rents, accruing since his decease, of the judgment-debtor's immovable property, then in the hands of his widow as her widow's estate, such rents not being assets of the deceased, but the personal movable property of the widow, and this even if the decree-holder had not, as in fact he had, agreed for consideration not to execute his decree against the movable property of the widow.(6)

A receiver does not represent the estate for all purposes ; he would have none of the powers which may be conferred under O. XL. of the Code in respect of property belonging to the judgment-debtor not attached in the suit in which the order was made.(7) But in the next mentioned case the whole zemindari was attached, and it was held that the receiver could maintain the suit.

(1) *Benode v. Rajnarain*, 7 C. W. N. 651 : 30 C. 699.

(2) *Sundaram v. Sankara*, 9 M. 334.

(3) *Mirza Mahomed Aga v. Widow of Balmakund*, 2 I. A. 241 at p. 245.

(4) *Gopalasami v. Sankara*, 8 M. 418, 420.

(5) *Toolsa v. Bombay Tramway Co., Ltd.*, 11 B. 448.

(6) *Kanno Dai v. B. J. Lacy*, 19 A. 235.

(7) *Sundaram v. Sankara*, 9 M. 334.



A zemindari was attached in execution of certain decrees against the zemindar, and the plaintiff was appointed receiver with full powers under the Code of Civil Procedure to manage the zemindari. Before the appointment of the receiver, the zemindar had expended certain sums at the defendant's request to repair a tank for irrigation of lands held by them in common with him. This suit was brought to recover the sums so expended. It was objected that the receiver could not maintain the suit on the ground that the sum sued for was neither the subject of a suit against the zemindar nor property attached in execution of a decree against him. *Held*, that the receiver could maintain the suit. It was also contended that the suit, whether viewed as one for contribution or upon a contract, was barred by limitation in respect of all payments made by the zemindar more than three years before the suit, and further that the receiver could only sue the defendants severally for their proportionate shares of the sum claimed. *Held*, that the suit being for work and labour done at their request was not barred by limitation, and that the defendants were jointly and severally liable for the sum sued for.(1)

In cases in which a receiver, appointed at the instance of the judgment-creditor, misappropriates money collected by him, the decree is not satisfied *pro tanto*, but the loss falls on the estate or its owner subject to the receiver's liability.(2) Inasmuch as the judgments in the last mentioned case are instructive as to the general position of a receiver, they are here cited in full.

In original suit No. 415 of 1884 on the file of the District Munsiff of Sivaganga, appellant obtained a money-decree against respondent. In execution of the same, the produce of the village of Kumbanur in Fasil 1299 was attached by appellant, and on his application, a receiver was appointed under s. 503 of the former Code of Civil Procedure to superintend the harvest and to recover the *melvaram*. The receiver collected a sum of Rs. 845-2-7 on account of the *melvaram*, but instead of remitting the amount to the Court, misappropriated it to his own use. Thereupon, respondent instituted criminal proceedings against him, and the receiver

Orr v.  
Muthia  
Chetti.

(1) *Sundaram v. Sankara*, 9 M. 334.

(2) *Orr v. Muthia*, 17 M. 501.



absconded and was still at the time of the judgment absconding. Appellant then applied for execution against respondent in respect of the balance due under the decree, and the latter contended that the decree must be taken as satisfied to the extent of the sum of money misappropriated by the receiver, from whom, it would appear, no security was taken for the due performance of his office. Both the Courts below disallowed the contention, hence this appeal. The question which arose for determination was, whether in cases in which a receiver, appointed at the instance of the judgment-creditor under s. 503, misappropriated his collections, the decree ought to be treated as satisfied *pro tanto*, on the ground that he is the agent of the judgment-creditor on whose application he was appointed. The Court observed as follows :—

“The only case cited at the hearing is that of *John Tiel & Co. v. Abdool Hye*.<sup>(1)</sup> That was decided under s. 243, Act VIII of 1859. There the manager exceeded the powers conferred upon him by the Court, and mortgaged the attached property with the consent of all the parties concerned, so as to leave some proprietary interest in the judgment-debtor. The question for determination was whether any judgment-creditor coming after the appointment of the manager and the making of the said mortgage, had a right to attach and sell what remained of the judgment-debtor's interest in the property. The Court held that he was entitled to attach, and stated the ground of decision in these terms : ‘A manager appointed under Act VIII of 1859, s. 263, so far as he is an officer of the Court, is, at the most, the hand of the Court for the purpose of gathering in on behalf of the judgment-debtor the moneys due to him, in order that they may immediately be applied to the satisfaction of the decree. If he does more than this and deals with the subject of the property itself, he must do so as the agent of the judgment-debtor, and not properly as the officer of the Court.’ In the case before us, the receiver collected the *melvaram* in the exercise of the power conferred upon him by the Court, but instead of paying the collections into Court, as he was bound to do in order that they might be applied in satisfaction of the decree, misappropriated them to his own use in breach of his duty as receiver. I am of opinion that the judge is right in holding that

(1) 19 W. R., C. R., 73.



the present case is not on all fours with the other case. I do not think, however, that the decision of the Judge can be supported. He considers that the receiver in the present case was the judgment-creditor's agent, because it was on his application that the appointment was made. The appointment is the act of the Court, and once made in the interests of justice or *ex debito justitiæ*, he is an officer or representative of the Court, and subject to its orders. His possession is the possession of the Court by its receiver, and the tenants in possession, when he is appointed to receive rents and profits of immovable property, become virtually tenants *pro hac vice* of the Court, their landlord. His possession is the possession of all the parties to the proceeding according to their titles. The moneys in his hands are *in custodia legis* for the person who can make a title to them. The judge observes that very wide powers are conferred upon receivers by s. 503 including a power to remove the property in possession, but it does not follow from it that his relation either to the Court or to all the parties interested in the proceeding undergoes any change in proportion to the extent of his powers. For it has been held in England in similar cases that a receiver appointed by the Court is appointed on behalf and for the benefit of all persons interested, parties to the suit or proceeding. This being so, it is clear that if a loss arises from the default of the receiver, the estate must bear the loss as between the parties to the suit or proceeding. It is true that when the party entitled to an estate is ascertained, the receiver will be considered his receiver, and this principle is applicable in the case of a suit in which title to property is decreed, and not to the case before me, for the decree under execution is a money-decree, the title in the property under attachment continuing to vest in the judgment-debtor. The first mentioned rule is only the result of the general principle that the loss must fall on the estate or its owners, subject to the receiver's liability. The terms "receiver" and "manager" are synonymous, and though the appointment of a receiver may, in certain cases, operate to change possession, yet it has no effect whatever on the title of either party to the property which is placed in the possession of the receiver. For any loss arising from his default, the receiver is certainly responsible, but when he cannot be proceeded against, the question as between innocent parties is who ought to bear the



loss which is imputable to neither, and the only answer is that it must devolve on the estate to which the appointment relates. There is also another reason in support of this view. Moneys in the hands of the receiver belong to the Court which appointed him, and are *in custodia legis*, and he cannot spend them except under the orders of the Court. If they are lost, whilst in custody of the receiver notwithstanding the exercise by him of due care, it cannot be denied that the loss must devolve on the estate, for the loss is not imputable to his default or that of any other. The Courts below are in error in introducing a theory of agency without reference to the title to the property, for the collection of the rents of which the receiver has been appointed. I set aside the orders of both the Courts below and direct that appellant be allowed to execute his decree without being compelled to deduct from the amount thereof, the amount misappropriated by the receiver. Respondent will pay appellant's costs throughout.”(1)

On appeal under s. 15 of the Letters Patent the Judges before whom the case came, differed in their views.

Shephard, J., said : “The point raised by this appeal is one on which authority is naturally scanty, because it would hardly arise if ordinary care were taken. It seems that, in execution of a decree obtained by the respondent, a receiver was appointed to superintend the harvest and collect the *melvaram* payable to the appellant. It is not explained why such an expensive and cumbrous way of executing an ordinary decree was adopted. The receiver thus appointed apparently was not required to give, and anyhow did not give, the security which the 503rd section of the Code requires. He collected certain moneys on account of *melvaram*, but instead of paying them into Court misappropriated them and absconded. A fresh application having been made for execution, the appellant met it by claiming credit for the moneys so collected, but not paid into Court. The question is whether the appellant, the judgment-debtor, or the respondent, the decree-holder, must bear the loss occasioned by the defalcation of the receiver. Mr. Justice Muttusami Ayyar reversing the order of the

---

(1) *Orr v. Muthia* 17 M. 502 per Muttusami Ayyar, J.



Courts below has decided the question in favour of the decree-holder, and I have arrived at the same conclusion. Such authority, as there is, is in favour of it, although it must be admitted that the circumstances of *Lord Massareene's*(1) case were quite different from those of the present case. The case is one which cannot be decided upon any theory of agency. A receiver appointed to collect moneys is not an agent of either party; he is an officer of the Court deputed to collect and hold the moneys collected by him in accordance with the orders of the Court. The party at whose instance a receiver is appointed has no greater or less control over his acts than the other party to the litigation. It is by the Court only that he can be dismissed as well as appointed. The argument on behalf of the appellant was to the effect that, as he or the tenants indebted to him were bound to pay the *melva-ram* to the receiver, so a payment by them must *pro tanto* operate as a complete discharge. Unless such discharge and satisfaction of the decree was effected by the payment, the appeal must clearly fail. What then is there in the provisions of the Code to justify us in holding that a judgment-creditor must be deemed to be satisfied by the mere fact of a receiver getting in moneys due to the judgment-debtor? The ordinary right of a judgment-creditor is to have the amount of his debt paid into his own hands. As to that proposition, I apprehend there can be no doubt; see *Soobul Chander Law v. Rassick Lall Mitter*.(2) The money may be paid out of Court immediately to the judgment-creditor, or it may be paid into Court and taken out by him. Then only is he bound to certify to the Court under s. 258 the fact of payment. There is a special provision in the 336th section of the Code entitling the debtor to personal release on his paying the money to an officer of the Court, and there is a similar provision in the 341st section for the case of a debtor in jail paying the money to the officer in charge of the jail. But in the latter section it is expressly declared that a discharge under it does not operate as a discharge of the debtor from his debt. It is a personal discharge only. These provisions, which were relied upon by the appellant's counsel, so

---

(1) *Hutchinson v. Massareene* 2 B. & B., 49.

(2) 15 C. 202 (1888).



far from supporting his argument, rather indicate that, as a general rule, the receipt of money by an officer of the Court is not by itself a good discharge. Payment into Court by the judgment-debtor stands on a different footing. It is expressly recognised by the 257th section, and a debtor who, on his debt being attached under the 268th section, pays the money into Court is discharged as effectually as if he has paid it to his creditor. In the present case we are not concerned with any question as to the discharge of a third person, nor with the case of a payment made by the judgment-debtor. The money which came to the receiver's hands was collected by him from persons who were indebted to the judgment-debtor. There was no payment by the judgment-debtor either out of Court to the judgment-creditor or into Court. The most that the judgment-debtor can say is that his tenants have paid to the receiver moneys due to him and obtained thereby a good discharge. The Code does not provide that such a payment shall be deemed equivalent to a payment by the judgment-debtor to the judgment-creditor personally. A provision to that effect would be inconsistent with the scheme of the Code and the position of a receiver, for a receiver who has collected moneys due to the judgment-debtor does not hold them for the judgment-creditor. He holds them for the Court in order that the Court may decide regarding them. [See *In re Dickinson*.(1)] Even if the moneys had been paid into Court, it would not necessarily follow that the judgment-creditor would have been satisfied. There is an apparent hardship in holding that a judgment-debtor whose tenants have made payments to a receiver may be called upon a second time to pay money in satisfaction of the decree. The answer to that is that, if he thought the receiver was not a person to be trusted he ought to have insisted on the Court's taking proper security. It is begging the question to say that it was not his business, but that of the judgment-creditor to see that security was given. When once it is admitted that the receiver is not the agent of either party and that the decree-holder, until full satisfaction of the decree has been obtained, is entitled to go on executing his decree, the only question is whether the decree has

---

(1) L. R. 22 Q. B. D. 187.



in fact been satisfied. Is the judgment-debtor in a position to call upon the judgment-creditor to show cause under the provisions of the 258th section? In my opinion the question must be answered in the negative, and therefore the appeal should be dismissed."

The judgment of Davies, J., however, on the other hand, was as follows :—

"A receiver was appointed by the Court under s. 503, Code of Civil Procedure, at the instance of a judgment-creditor holding a money-decree to execute his decree by taking possession of and selling crops, or rather the *melvaram* share thereof, belonging to the judgment-debtor. The receiver acted accordingly, but instead of remitting the sale-proceeds amounting to Rs. 845 odd to the Court, he embezzled the amount and absconded. As no security had been taken from the receiver, as it ought to have been, the money is lost and is irrecoverable. The judgment-creditor has now applied to the Court to again recover the decree amount from the judgment-debtor without giving him credit for the amount already collected by the receiver. The question, therefore, is whether the judgment-debtor is liable to pay that amount over again owing to the defalcation of the receiver, or whether the loss must be borne by the judgment-creditor. The District Munsif and the District Judge held that the judgment-creditor must be the sufferer on the ground that the property which was available for the satisfaction of the decree-debt had been taken from the control of the owner, the judgment-debtor, at the instance of the judgment-creditor who had applied for the appointment of the receiver, and had not seen that due security was given by him, whereas the judgment-debtor was in no way to blame. The learned Judge of this Court has held to the contrary ruling that the loss occasioned by the receiver's default must, in accordance with English precedents, fall upon the estate, and as the estate in this case was the estate of the judgment-debtor, it was the judgment-debtor who must bear the loss. The rule is no doubt equitable enough where the parties have all got an interest in the estate, because the loss is shared by them all, but here the case is quite different. In this Court, it is urged on the one hand, that the receiver should be treated as agent of the judgment-creditor, as it was on his motion the receiver was



appointed, and as it was the judgment-creditor's fault that due security was not taken, he should bear the loss. On the other hand, it is argued that the decree-debt has not been satisfied, and the judgment-debtor's liability to pay it lasts until the judgment-creditor is actually paid the money due. The solution of the difficulty appears to me to lie in the determination of the question as to when a judgment-debtor is to be considered discharged of the decree-debt, and the correct answer is, in my opinion, when he has paid the money into Court, or out of Court to the decree-holder, or otherwise as the Court directs. Section 257 of the Civil Procedure Code is my authority for the proposition. It directs that "all money payable under a decree shall be paid" in one of the three modes stated above, and although there is no express declaration that such payment operates as a discharge of the decree-debt, it seems obvious that when the judgment-debtor has paid the money payable by him in the manner in which the law directs him to pay it, he can do no more, and is henceforth absolved from further liability, or in other words, had discharged his debt. It will be conceded that a payment direct to the decree-holder—the judgment-creditor himself, subject of course to the certificate required by s. 258 to be given to the Court—is a valid discharge, and we find classed with such valid discharge two other alternative modes of discharge, entirely free from any condition or proviso such as payment out of the Court to the decree-holder is subject to. The three modes of payment being classed together as alternative courses, they must be taken to be of equal efficacy, and when one course is shown to have the effect of a discharge, it follows that the others have the same effect. I take it therefore that there is a distinct implication from the directions in the section itself, that a payment into Court, or otherwise as the Court directs, of the money 'payable under a decree' is an absolute discharge of the judgment-debt or as it is unconditional, just as a payment to the decree-holder becomes a complete discharge on compliance with a subsequent condition. It must be remembered that the Court holds money so paid into it to the credit of the decree-holder, as there are various provisions of law indicating that a payment into Court by a debtor is tantamount to a payment to the party entitled to receive it. I may instance the case of a garnishee which seems directly in point. The payment of the amount of his debt into Court 'shall discharge him as effectually as payment to the party



entitled to receive the same' as declared in s. 268 of the Code of Civil Procedure. Then there are the cases of payment of a deposit in Court (a) by a defendant under s. 376 of the Code of Civil Procedure which is regarded under the following section as held by the Court on plaintiff's account to whom it shall be payable, and (b) by a mortgagor under s. 83 of the Transfer of Property Act which is held 'to the account of the mortgagee.' Decrees for foreclosure and redemption drawn up under ss. 86 and 92 of this Act also provide for payment into Court as being equivalent to payment to the plaintiff or the defendant as the case may be. Supposing that in any of these cases the money paid in were to be misappropriated by a servant of the Court or of the bank or treasury where the money was kept, it surely could not be contended that the depositor, or the person who had made the payment under the decree, was bound to make good the loss by paying twice over. It would, indeed, be a case of *bis vexari* if the Court should issue process to recover an amount already paid to it. This convinces me that payments made into, or by order of, Court under plain directions of the law are good and valid discharges of the debts on account of which the Court itself undertakes to receive them, and that any loss accruing thereafter cannot be charged to the person making the payment, and if anybody is to be held responsible, it must be the officers of the Court or their master the Government. If payments into Court or payments made as ordered by the Court are valid discharges, as in my opinion they are, the further question arises in this case whether the receipt by the receiver of the money which he had realized by sale of the judgment-debtor's property amounted to a payment under direction of the Court, for it is, not pretended the money ever reached the Court, so as to be deemed as having been paid into it. Now I presume that payments made to the bailiffs executing a warrant of arrest or a warrant of attachment and authorized to receive them would be considered cases falling under clause (c) of Section 257 as payment made 'otherwise as the Court directs.' These processes against the person or the property of the judgment-debtor are issued under the authority of s. 254 of the Code, and the forms are to be found in the fourth schedule, Nos. 136 and 154. Each form provides for payment being made by the judgment-debtor to the process-server of the amount of the decree and costs of execution, in



which case the warrant ceases to have effect, the judgment-debtor being released from custody in the one case or his property in the other, these directions being more expressly given in ss. 336 and 275 of the Code itself. This latter section is instructive as showing that payment into Court is a satisfaction of the decree so far as the judgment-debtor is concerned, as may be gathered from the wording, 'if the amount decreed with costs, etc., be paid into Court, or if satisfaction of the decree be otherwise made through the Court.' But this is by the way. From the references made it cannot be doubted that a payment to an officer of the Court, under direction of the Court, is as effectual as a payment made directly into Court. The case of a receiver seems precisely on the same footing. He is an officer to the Court equally with a bailiff or a process-server, and he collects the money due under the decree also by direction of the Court, and payment to him is therefore as good and valid as to the Court itself, falling as it does under cl. (c) of s. 257. In this view I come to the conclusion that the judgment-debtor, appellant in this case, has discharged the decree-debt in execution to the extent of the Rs. 845 and odd of money collected by the receiver, and that execution can proceed only for the balance due if any. I would therefore reverse the decision under appeal and restore that of the District Munsif with appellant's costs throughout to be paid by the respondent. It appears that the appointment of the receiver was made by the Munsif without the express authorization of the District Court, which is required by s. 505 of the Code, but as the appointment has been treated throughout as a valid one, its validity cannot well be questioned at this late stage of case; at any rate, it is a matter to which the principle of *quod fieri non debet factum valet* may most appropriately be applied."

In consequence of this difference of opinion the case was referred to the Full Bench, consisting of Collins, C. J., Shephard and Davies, JJ., who delivered the following judgment:—"The appellant not being represented and not appearing, we dismiss the appeal with costs. Under the provisions of s. 575, Civil Procedure Code, the order of this Court, dated 24th January 1894, *Orr v. Muthia Chetti*(1) prevails, and the order of the District

---

(1) *Muthia v. Orr* 20 M. 225.



Court of Madura, dated 26th August 1892, passed on C. M. A. No. 8 of 1892, is reversed with costs."

The above decision was followed by Anantakrishna Ayyar, J., in a subsequent case.(1a) But in view of O. 21, r. (2) (a) —a Full Bench of the Oudh Chief Court took a different view, *viz.*, that the loss should not fall on the judgment-debtor but on all the judgment-creditors rateably.(1b) This judgment, however, has been set aside by the Privy Council in *Brij Indar v. Jai Indar*(1c) with the result that *Orr v. Muthia* [p. 176] stands as the leading case on the point.

§ 27. If grounds be shown for such a course, the receiver who has been appointed may be removed upon the application of the parties. A Judge ought not, however, to remove a manager who has been appointed after hearing both sides, summarily, and without assigning reasons simply at the request of the decree-holder. When a Judge did so, his order was set aside, the Court stating that its order would not prevent the Judge from thereafter removing the manager should he show sufficient reasons for the removal. The Court also set aside a subsequent order allowing sale of other properties attached, which properties were placed along with the others in the hands of the manager.(2) And if where a manager has been appointed and after a lapse of a reasonable time it appears that the collections are insufficient to meet the claims of the creditors, there is no reason why an application should not be made by the decree-holder for the removal of the manager and the sale of the property.(3) Where a manager had not filed accounts and the Judge found that the management could not be continued with any prospect of the debt being paid within three years, he was held to have done right in removing the manager and ordering the property to be sold.(4)

(1a) *Natesa v. Govinda* 1930 M. 4.

(1b) *Jai Indar v. Brij Indar* 1929 O. 231 : 117 I. C. 748.

(1c) 59 I.A. 311 : 36 C.W.N. 882 : 7 Luck. 382 : 1932 P.C. 191 : 137 I.C. 900.

(2) *Huree Sunkur v. Jogendro* 19 W. R. 66.

(3) *Bunwaree v. Girdharee* 16 W. R. 273, 274.

(4) *Huree Sunkur v. Jogendro* 22 W. R. 220 (1874). But Court should not order sale if receiver may soon pay off : 1951 A. W. R. 71.



## CHAPTER V

### RIGHTS AND POWERS : DUTIES AND LIABILITIES OF A RECEIVER.

§ 28. Rights and Powers—(a) General—(b) Discretion—(c) Application for instructions—(d) Power to appoint deputies and assistants—(e) Possession—(f) Leases—(g) Sales—(h) Borrowing—(i) Payment—(j) Suits and applications by—(k) Indemnity—(l) Salary and allowances—(m) Lien.

§ 29. Duties and Liabilities—(a) Amenability to Court—(b) Duty of obedience—(c) Non-liability in respect of acts done under order—(d) Impartiality—(e) Duties generally—(f) Liability for loss—(g) Liability on covenants—(h) Information to be given to Court—(i) Duty to account.

§ 28. It may be said in a general way that a receiver has no powers except such as are conferred upon him by the order by which he is appointed and by the practice and usage of the Court. He is merely an officer of the Court : his holding is the holding of the Court : he is but a minister and therefore has not the discretionary power of a person acting in a fiduciary character. In theory the Court itself has the care of the property in his hands. He can do nothing likely to seriously diminish the fund without special leave of Court. He is not, however, merely the assignee of him whose property is placed in his care, but he may exercise such powers in dealing with the property as belong to a receiver according to the practice of the Court and as are particularly conferred upon him by the order of his appointment.(1) Under the Code the Court may grant to the receiver all such powers as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing as *the owner* himself has or such of those powers as the Court thinks fit.(2) Where general powers of management are conferred he has all the powers of a proprietor.(3) Under the usual form of High Court order a receiver

Rights and powers.

(a) General.

(1) Beach, § 249. *Secretary of State v. Komargiri* 30 M. L. J. 456 (1915).

(2) C. P. Code, O. XL, r. 1 (1) (d).

(3) *Secretary of State v. Komargiri* 30 M. L. J. 456 : 32 I. C. 207.



is appointed with power to get in and collect the outstanding debts and claims and with all powers provided for in O. XL except that he must not, without leave of the Court, (a) grant leases for a term exceeding three years, (b) bring suits in a District Judge's or Subordinate Judge's Court except suits for rent, or (c) institute an appeal in any Court (except from a decree in a rent-suit) when the value of the appeal is over 1,000 rupees, or (d) expend in the repairs of any property in any period of two years more than half of the nett annual rental of the property to be repaired, such rental being calculated at the amount at which the property to be repaired would let when in a fair state of repair. A receiver is at all times subject to the control of the Court which possesses the power to make all necessary orders for the control of receivers appointed by it.(1) He has a right to the protection of the Court, and his possession will not be allowed to be disturbed.(2) The Court will see that he carries out his functions and will protect the agent appointed under its order.(3)

The scope of the receivership may be extended. Where a receiver had been appointed by consent to receive the rents of immovable property belonging to the estate, and a rule *nisi* was issued to show cause why the receiver should not take possession of all the estate, the Court extended the power of the receiver by appointing him receiver to recover and take possession of all the cash and movable property belonging to the deceased.(4)

When the receiver has obtained possession, he may and should, under the sanction of the Court when necessary, do all such acts of ownership as to the receipt of rents, compelling payment of them, management and letting the lands and houses, and otherwise making the property as productive for parties to be ultimately declared entitled thereto as the owner himself could do if he were in possession. Where the order directs that the receiver shall make payments, he must, when complying with the order, take proper receipts which must be produced when he passes his account. He is only justified in paying the person

(1) Beach § 260. *Balbir v. Ram*, 1960 Raj. 192.

(2) *ib.*, § 266, v. ante, Ch. II, § 16; *Allahabad Bank v. Raja*, 14 L. 779 : 146 I. C. 966.

(3) *Dinonath v. Hogg* 2 Hay, 395, 397 (1863).

(4) *Yeswant v. Shankar* 17 B. 388.



named in the order for payment or on a power of attorney duly executed by him. When he is appointed over personal property, it will be his duty to collect all he can get in. When a receiver is also appointed to manage as in the case of a receiver of a partnership concern, he must be guided by the terms of the order of appointment, keeping in mind the general maxim that, as his authority flows from the Court, he must in all cases act under a special order to be obtained from the Court.(1)

Where a decree or order, not solely for costs of suit, has been made by the Court, under which any sum of money or any other thing shall be payable to, or receivable by, an infant or a person of unsound mind not so found by inquisition, every such sum of money or thing shall, unless the Court shall otherwise order, be paid or delivered to the receiver of the Court whose duty it shall be to receive or realize or obtain possession of and hold the same on behalf of such infant or person of unsound mind.(2)

In many matters connected with the care and management of the property entrusted to them, receivers are allowed to use their own discretion, subject, however,<sup>(b) Discretion.</sup> to the control and approval of the Court. Such approval may usually be had if it appears that the receiver acted in good faith and for the benefit of the parties in interest.(3) But in all important matters a receiver should apply for, and obtain the direction of, the Judge who appoints him.(4) A receiver, however, must do no act which may involve the estate in expense without the sanction of the Court. So he may not defend actions or bring ejectment without leave. He may with propriety insure the property and lay out small sums in customary repairs, but where the amount is large, or if either for their amount, or the circumstances under which the moneys for repairs are claimed, the receiver feels any difficulty in allowing them, he should apply for sanction as he should also do in other cases which are not matters of discretion, or where it

(1) Kerr, 240.

(2) Belchambers' "Rules and Orders", 644. See Chapter XIX r. 5, "Rules and Order" (1914).

(3) Beach, § 256.

(4) *Balaji v. Ramchandra* 19 B. 660, 662; *Bapuji v. Lakhmidas* 48 B. 200 : 25 Bom. L. R. 1180 : 1924 B. 89 : 81 I. C. 844. Also 1940 P. 516 : 19 P. 433.



is felt that the Court's direction is required in the management of the estate.(1) As regards repairs, the receiver must not, under the usual form of High Court order, without the leave of the Court, expend in the repairs of any property in any period of two years more than half of the nett annual rental of the property to be repaired, such rental being calculated at the amount at which the property to be repaired would let when in a fair state of repair. The application of the funds which the receiver holds strictly subject to the direction of the Court and the entering into contracts are not matters of discretion. Although as an individual he may bind himself, yet in order to affect the funds in his hands, his acts must be ratified by the Court.(2)

(c) Applica-  
tion for in-  
structions.  
Legal assist-  
ance.

A receiver has a right to apply to the Court for instructions when a question arises as to what may be his duty under its orders. This right grows naturally out of the fact that he is an officer of the Court and subject to its directions and is charged with responsible and often embarrassing duties. He is entitled to advice from the Court upon all questions of difficulty or intricacy and may make application for it on all suitable occasions without hesitation. It has been more forcibly said that he is bound in all cases of doubt and especially of conflicting interests or claims to take the direction of the Court. The application for instruction may be made without notice to the parties interested in the fund, though where there is no necessity for immediate action, it is the better practice not to apply *ex parte*.(3)

A receiver is entitled to legal assistance in proper cases, and will be allowed reasonable and proper fees in this behalf out of the funds, only when the employment has been previously sanctioned by the Court, but also when it was not previously authorised, if the expense has been incurred in the exercise of a sound discretion. Such allowance will be made only for services requiring legal skill, but not for services which were not rendered to the receiver or for services which were not in behalf of the interest represented by the receiver, or what were rendered in

(1) Kerr, 258, 240, 248.

(2) Beach, § 257.

(3) Beach, § 259 : a receiver may employ counsel : but usually the

counsel or solicitor of either of the parties should not be employed, *id.*, §§ 261, 263. *Mohini v. Baroda* 14 C. L. J. 445 : 12 I. C. 780.



matters with which the estate in the receiver's hand had no concern, or in which the interest only of the receiver personally may be involved, or for services, the necessity for which had been caused by the receiver. Such allowances are to be carefully scrutinized, and if they are unnecessary or extravagant, they should be reduced or disallowed altogether. Such allowances are in substance to be governed by the reasonable necessities in that regard, if the receiver has properly discharged the duties which belong to him to perform, by the time necessarily spent in the administration, the grade of service required, the efficiency of that rendered, the benefit to the trust-property, the fidelity displayed and by all other circumstances throwing light on the question.

A receiver should not employ the counsel of either of the parties to the litigation in which he was appointed ; since their duty is to protect the interests of their respective clients and to watch the receiver's proceedings, to the end that a favourable performance of the duties may be insured, they are not regarded as competent to act as counsel for the receiver, and their undertaking to act in such a capacity might frequently cast upon them inconsistent and conflicting duties which could not be properly discharged by one and the same person.

The rule prohibiting a receiver from employing the counsel of either party in the cause, is limited in its application to cases where the receiver is acting adversely to one of the parties to the litigation.

The authority of a solicitor to represent his client does not necessarily terminate with the judgment in the suit. (1)

A receiver is not justified in delegating or entrusting to another a duty entrusted to him by the Court. If he does so and thereby causes loss to the estate, he is bound to make it good. (2) So where a receiver employed three successive *Karkuns* without security and left to each of them the absolute and uncontrolled management of the estate, and the custody of its funds, with the consequence that one of them made use of the whole of the collected funds for his own purposes and

(1) *Mohini v. Ram* 14 C. L. J. 445 ;  
12 I. C. 780.

(2) *Balaji v. Ramchandra* 19 B.  
660. See 8 I. C. 976 (Bur.).



destroyed or manipulated the accounts, the receiver was held to be accountable.(1)

The question whether he is entitled to employ others to assist him depends, if the terms of the order appointing him are silent on the subject, upon the nature of the estate and must be determined in each case with reference to its own circumstances. No general rule can be laid down; but whether he be allowed an assistant or not, the receiver must himself perform the proper duties appertaining to his office. These he cannot delegate.(2) If the estate over which the receiver is appointed be at a distance, he may appoint his own agent.(3) So also if he needs assistance in removing the property of which he is entitled to the possession, he may employ such as is necessary, at the expense of the fund in his hands.

A receiver of partnership property has no power except by special order of Court, to appoint a deputy receiver to be paid out of the fund in his hands, but he may appoint a competent person to take charge of and wind up the business and a reasonable number of keepers for the protection of the property and pay them out of the fund a reasonable compensation. If he be empowered to continue the business over which he is appointed, he may employ such person as may be necessary for this purpose, and the Court will not interfere with his discretion in this respect unless some abuse is shown. The responsibility for the selection of proper employees rests on the receiver.(4) The distinction appears to be that whereas the receiver cannot place on other shoulders the duties which lie directly on him to perform, he can employ assistants to aid him in carrying out those duties. It is usual and more prudent, however, to apply to the Court for its sanction of the proposed establishment, and if any questions of difficulty or responsibility arise with regard thereto, to seek the direction of the Court. A receiver in whom the Court confides is not entitled to mix up with his delegated authority another person who is a total stranger to the Court. In a case accordingly where the

(1) *Balaji v. Ramchandra* 19 B. 660.

(2) *Balaji v. Ramchandra* 19 B. 660.

(3) *Anon v. Lindsay* 15 Ves, 91.

(4) *Beach*, § 265. See *Taylor v. Sweet* 40 Mich. 736.



receiver, in order to obtain sureties, and agreed that the money to be collected from the property over which he was receiver should be handed over to a person who was the partner of one of the sureties, and be deposited with bankers in the joint names of the sureties, and that all drafts upon the moneys so deposited should be written by the aforesaid partner and signed by the receiver, it was held that the receiver was liable for the loss occasioned by the failure of the banking house in which the money had been deposited.(1) If a receiver puts a fund out of his control so that other persons shall be able to deal with it, he guarantees the solvency of those persons and becomes answerable for any loss that may ensue. It is immaterial that he may not have so parted with the control as to enable the other person to deal with it without his concurrence, if he has parted with his exclusive control, by associating with himself the authority of another person. If, indeed, a receiver parts with his control over the fund, by introducing the control of an irresponsible person, who is unknown to the Court, it seems that he shall be answerable for what has happened to the fund which he has so dealt with, not merely where the peril can be shown to be cause of the loss, but where he has not conducted himself as a prudent person would have done.(2) A receiver is not entitled to charges incurred for paying the salary of certain officers, not necessary for discharging the duties of the office and appointed without the leave of the Court.(3)

According to the usual form of order it is ordered that the plaintiff and the defendant and all persons claiming under them do deliver up quiet possession <sup>(e) Possession.</sup> of the property, movable or immovable, together with all leases, agreements for lease, kabuliats, account books, papers, memoranda and writings relating thereto to the receiver : and it is further ordered that the receiver do take possession of the property, movable and immovable, and collect the rents, issues and profits of the immovable property, and that the tenants and occupiers do attorn and pay their rents in arrear and growing rents to the receiver. It is both the

(1) *Salway v. Salway* 2 R. & R., 214, 219; *Kerr*, 273.

(2) *Ib.*

(3) *Barada v. Rashmoni* 20 C. L. J. 113 : 28 I. C. 25.



receiver's power and duty to take possession of the property, whether movable or immovable, over which he is appointed. But he cannot recover property acquired before his appointment from a stranger to the suit. Nor does his appointment affect any rights previously acquired by third persons, nor the rights to recover property sold away by the judgment-debtor as being void under s. 53 of the Transfer of Property Act or on the ground that the sale was not binding on the creditors of the judgment-debtor.(1) Where a receiver is appointed by the Court to get in outstanding personal property, it is his duty to collect all he can get in. The power of a receiver to take property implies a correlative duty on the part of any one having it in possession to deliver it to him, and such holder violates the law in resisting the exercise of the lawful authority of the receiver. Where parties to the record are directed by the order to deliver up to the receiver the possession of such parts of the property as are in their holding, the receiver as soon as his appointment is complete should apply to all such parties to deliver up possession accordingly. If any of them refuses, it is usual to serve such party personally with the order, and if possession is still withheld, the receiver must apply to the Court which will give its assistance in obtaining possession of property which is the subject-matter of the receivership. The order appointing a receiver of outstanding personal estate generally comprises a direction that the parties in whose possession the same may be shall deliver over to the person appointed to be receiver all securities in their possession for such outstanding personal estate together with all books and papers relating thereto. If such parties refuse, application must be made to the Court for the purpose of enforcing the order. When third persons who are indebted to the estate refuse to pay the amount due by them, sanction must be obtained from the Court to sue them.(2) The Court may remove the person in whose possession or custody the property may be from the possession or custody thereof and commit the same to the custody or management of the receiver.(3)

---

(1) *Mahomed Kasim v. Panchapakesa* 35 M. 578 : 17 I. C. 233.

(2) Kerr, 240 ; Beach, § 253 ; High, §§ 144, 145.

(3) Civ. Pro. Code, O XL, r. 1.



If tenants in possession of property over which a receiver is appointed are directed by the order to attorn to him, the receiver should, as soon as his appointment is complete, call on them to attorn accordingly, and if they refuse, application should be made to the Court. The receiver is entitled to all the rents in arrear at the date of his appointment and to all the rents which accrue during the continuance of his receivership, and an order will, if necessary, be made for payment. After the tenant has attorned to the receiver and so created a tenancy between him and the receiver, the latter may distrain upon the tenant in his own name and on his own authority without leave obtained from the Court.(1) Where the receiver is appointed of lease-holds, upon him devolves the performance of the obligations imposed by the possession of land : therefore he must out of the sub-rents discharge the head-rents, and when these are discharged, distribute the surplus according to the interest of the parties in the cause and the order of the Court.(2)

(f) Leases.

A receiver appointed to collect the rents of an estate should, whether he employs a subordinate or not, receive the rents as they are from time to time collected on his behalf, if he does not himself recover them, and keep them under his own control in a bank to a separate account or in some other secure place of deposit and pay out such sums as from time to time may be required for current expenses and repairs and personally or by a subordinate keep correct and accurate accounts of the receipts from and expenditure upon the estate, obtaining vouchers for all, other than petty sums paid. He is bound to make good a loss caused to it by a breach of his duties.(3)

When the receiver is informed by the tenants that the defendants have interfered with the rents it is his duty to move the Court for an attachment.(4) The abatement of the suit does not affect or determine the appointment of a receiver or suspend his authority to proceed against the tenants. His authority continues until an order is made for his removal until which

(1) Kerr, 232.

(2) *Ib.*, 251. Cf. *Kedar v. Prabhabati* 48 C. W. N. 275 P. C.

(3) *Balaji v. Ramchandra* 19 B 660, 661, 662.

(4) Kerr, 198, 255.



time he may distrain or perform his other duties notwithstanding the abatement.(1) The power which a receiver possesses in English law(2) to give notices to quit is applicable to tenancies, the periods of which expire during the incumbency of the receiver. The powers of a receiver in this regard were fully discussed in the cases next mentioned.

In the undermentioned case, (3) *D* was appointed receiver in a partition-suit pending in the High Court by an order which amongst other things, gave him power to let and set the immovable property, or any part thereof as he should think fit, and to take and use all such lawful and equitable means and remedies for recovering, realizing and obtaining payment of the rents, issues and profits of the said immovable property, and of the outstanding debts and claims by action, suit, or otherwise as should be expedient. *D*, without special leave of the Court, served a notice to quit on certain tenants of the estate, who claimed to hold a permanent lease, and afterwards instituted a suit to eject them, also without special leave of the Court. *Held*, that the order appointing him did not give him power to serve notice or to institute such suit without the special leave of the Court, and that as he was appointed under the provisions of s. 503 of the Code of Civil Procedure and not vested with the general powers referred to in that section, but only with the powers referred to in the order appointing him, and as a receiver is not otherwise authorized to institute such suits without special leave of the Court, the suit must be dismissed.

During the course of the judgment the Court observed as follows :—

“The question therefore is whether, by the terms of the order of the High Court, dated 11th. August 1881, appointing Mr. Davis as receiver, he was authorized either to issue a notice to quit, the tenants holding under a permanent lease, or to follow up that notice by an action for ejectment without further special permission from the Court. With reference to this point, we may observe that when the learned Counsel for the appellants first opened it, we heard the Counsel for the respondents before going further into the case ; and we then decided to hear the appeal on

Drobomoyi  
Gupta v.  
Davis.

(1) Kerr, 234.  
(2) *Ib.*, 242.

(3) *Drobomoyi v. Davis* 14 C.  
323.



all the points raised, upon the express understanding that before the close of the case an application should be made on behalf of all the plaintiffs-owners, adopting the action of the receiver, and agreeing to be bound by the result of trial. But no such application has been made. Some days after the hearing had terminated, a petition was tendered signed by some of the plaintiffs-owners, but not by all. It is obvious that an action for ejectment cannot be maintained by some only of the owners of an undivided estate. We were, therefore, unable to take cognizance of that petition, and the question already stated must be decided. We have been referred to English cases as showing what a receiver may do of his own authority and what he may not do without the permission of the Court. The order of appointment which is printed at pages 55 and 56 of the paper book, authorizes the receiver to take possession of the property, movable and immovable, of the estate, and amongst other things authorizes him to let and set the said immovable property or any part thereof as he should think fit. Mr. Evans for the respondent referred us to Kerr on Receivers, and pointed out a passage at page 151, showing that a receiver appointed by the Court with general authority to let the lands from year to year has thereby also an implied authority to determine such tenancy by a regular notice to quit. He referred us to the cases mentioned in the footnote to page 151, as authority for this doctrine. These cases, however, appear to us to refer only to tenancies of the nature there described, namely, tenancies from year to year, or other tenancies, *the periods of which expire during the incumbency of the receiver*. The words "to let and set" in Mr. Davis' appointment order cannot, we think, give him as receiver any implied authority to interfere with tenures which, upon the face of them, are *permanent*. We think that to authorize him to issue such notice, special consent of the Court would be necessary. Mr. Davis must have been appointed receiver under the provisions of s. 503 of the Code of Civil Procedure; and no doubt the Court could have, had it seen fit, granted to him under that section all such powers as to bringing and defending suits, and for the realization, management, etc., etc., of the property as the owner himself had, or such of those powers as the Court thought fit. And if the order of his appointment had been drawn up in the form prescribed in the fourth schedule to the Code, that is, in the form



No. 168 of that schedule, there would have been no difficulty in the receiver's way in the present suit, for the form in question gives a receiver *full* powers under the provisions of s. 503. But the order was not drawn up in that form ; it was drawn up in the old form which prevailed at the time of the Supreme Court, and which, as we are informed, has ever since been in use. Instead of having full powers under s. 503, the receiver has the limited powers expressly given by the order of appointment. And we find in that order no words upon which we could hold that he was authorized to serve upon the defendants a notice to quit the tenure which they obtained from Rasmoni. Then it was contended by Mr. Evans for the respondents that the words of the order are sufficiently large to give the receiver power to bring this suit to eject, for the order authorizes the receiver to enforce claims by action, or otherwise. He submitted that the word 'claims' is sufficient to cover the present suit, the matter in dispute being a claim to a portion of the landed property. We are, however, unable to adopt this construction. The passage in which this word occurs is as follows : 'And to take and use all such lawful and equitable means and remedies for recovering, realizing and obtaining payment of the said rents, issues, and profits of the said immovable property, and of the outstanding debts and claims by action, suit, or otherwise.' These are the objects for which he is authorized to bring suits, and a suit to eject tenants and to take possession of land is not a suit for obtaining payment of a claim. That being so, it appears to us clear that the proceedings of the receiver in this matter, both as to the notice to quit and as to the bringing of this suit for ejectment, were unauthorized and of no effect against the defendants. This finding would of itself be sufficient to dispose of the suit, but as this is a case appealable to Her Majesty in Council, we think it our duty to express our opinion upon the other points raised." (1)

This case was subsequently distinguished in a later one, (2)  
 in which the order appointing a receiver gave him  
 Hari Dass  
 Kundu v.  
 Macgregor. power "to let and set immovable property or any part  
 thereof as he shall think fit, and to take and use all such

(1) *Drobomayi v. Davis* 14 C. 323  
 and 339—341.

(2) *Hari Dass v. J. C. Macgregor*  
 18 C. 477—481.



lawful and equitable means and remedies for recovering, realizing and obtaining payment of the rents, issues and profits of the said immovable property, and of the outstanding debts and claims, by action, suit or otherwise as shall be expedient." *Held*, under the terms of such order, the receiver has power to sue to eject, without obtaining permission of the Court, a *monthly tenant* whose tenancy was determinable by a notice to quit, which had been duly served. In its judgment the Court said :—

"The only question raised for our decision—and this point was raised in both the lower Courts—is whether the suit has been brought by the receiver under proper authority. We have been referred to the case of *Drobomoyi Gupta v. Davis*,<sup>(1)</sup> as a precedent for holding that this same receiver was found incompetent, without permission of the Court, to sue for the ejectment of a tenant under the terms of his appointment. We are not disposed to disagree with the rule laid down in that judgment, but we think that it is inapplicable to the present case. That was a suit for the determination of a tenancy of a *permanent* character. In the present case it has been found that the interest of the tenant was merely temporary and determinable by a notice to quit, which has been served. These two cases, therefore, are not identical. We have also been referred to a long series of cases decided in the Courts in England, quoted in *Kerr on Receivers*, pages 151 and 152. We observed that in all those cases the power of the receiver was questioned before the Court by which he was appointed. In only two of those cases was the objection raised by the party against whom the receiver was proceeding. In all the other cases the decision of the question only affected the receiver's right to charge his costs in the action against the estate. In the two cases to which reference has been made, *Wynne v. Lord Newborough*<sup>(2)</sup> and in a later proceeding between the same parties,<sup>(3)</sup> where the objection was raised by the parties against whom the receiver was proceeding, it was held that such persons had no valid interest to object, and their applications were refused. Having regard to the terms of the order appointing the receiver, we think that they are

(1) 14 C. 323 (1887).

(2) 3 Browne's C. C. 87.

(3) 1 Ves. Jr., 164.



sufficient to confer on him the power to bring a suit to eject a tenant having only a temporary interest, such as a monthly tenant in the case before us whose tenancy has been determined. We have been referred to the case of *Miller v. Ram Runjun Chuckerbutty*,<sup>(1)</sup> and although we may say that we do not altogether agree in the general terms of that decision, we find that it is not in point, as it affects the right of a party to proceed against a receiver without permission of the Court appointing him.<sup>(2)</sup>

As regards the power of leasing it is created by the order appointing the receiver who has no estate or interest in himself which enables him to lease. It is common to grant such powers of lease for a limited period, usually three years, but whenever it is desired to lease for a longer term the sanction of the Court must be obtained.<sup>(3)</sup>

When the receiver being empowered only to lease for three years made settlements with ryots for nine, and it was urged on his behalf that there was a custom in the zemindary to give leases for terms of nine years and that the leases had benefited the estate inasmuch as occupancy-rights had been destroyed, the Court observed that there was no doubt that the receiver could not lease for a term exceeding three years and that it would be improper for him to act in excess of authority and grant leases for a term longer than that for which he had power to grant them ; that whatever the custom might have been, the receiver's powers were limited ; and that if nine years' leases were for the advantage of the estate, the receiver might have come to the Court and asked for permission to grant them ; that it was a somewhat extraordinary doctrine to lay down that, provided that the estate be benefited, a receiver may exceed his powers, and in short do what he likes.<sup>(4)</sup>

(1) 10 C. 1014 (1884).

(2) *Hari Dass v. Macgregor* 18 C. 477—481.

(3) Under the general permission the receiver may in his discretion let out property but not for any period exceeding three years without obtaining special permission ;

*Belchamber, R. and O.*, Note to R. 20 ; See Chapter XXI, r. 5, Rules and Orders (1914), *Krishna Chunder v. Krishnosokha*, Order dated 20th May, 1878.

(4) *Gonesh v. Troyluckho* Re *C. T. Davis*, Suit 294 of 1881, Cal. H. C. O. O. C. J., per Trevelyan, J., 23rd March, 1887.



A receiver must let to the best advantage and obtain the best terms.(1) He may not either in his own name or through the medium of a trustee become a tenant of any part of the estate over which he is acting as receiver.(2)

A party in whose favour a receiver has, under order of Court, agreed to execute a lease, may, though not a party to the suit in which the order has been passed, apply on summons that the lease may be completed. It is not necessary that a suit should be brought for specific performance. The Court has power to summarily enforce the contract made by it when managing the estate, and it makes no difference that the Court has ceased to manage the estate before such contract is carried out by reason of the dismissal of the suit.(3) So in the case last mentioned the Court passed summarily such an order on the application of a lessee not a party to the suit in which the order completing the agreement for lease had been passed and at a time when such suit was no longer in existence. In the undermentioned suit the receiver appointed was given liberty to lease portions of the estate to the highest bidder whether shareholder or not. After certain negotiations certain of the shareholders bid at the auction for the lease, signed an agreement and made the necessary deposit under the impression that the receiver had agreed to accept the share of the proposed lessees as security. Subsequently differences arose both as to the terms of the lease and the nature of the security required. The parties claiming to be entitled to the lease moved in the suit in which the receiver was appointed for an order that the receiver should grant to the applicants a lease under terms and conditions read out to intended lessees at the auction on the security offered by them or on their furnishing such further security as the Court should require, and in the alternative if not entitled to a lease for an order that the money deposited with the receiver might be returned, and also for an order that the receiver might be discharged as regards the applicants' 16/30 share of the joint estate and the applicants put in possession thereof. It was objected in the first place that the application was not in form, and that the proper

(1) *Wynne v. Lord Newborough* 1 Ves. Jr., 164.

(2) *Kerr*, 244.

(3) *Surendro v. Doorga* 15 C. 253.



course for the applicants was to institute a regular suit against the receiver for specific performance if there was a contract capable of being enforced and not by motion. This point was, however, not argued at the hearing and the Court heard and disposed of the application on the merits dismissing the same so far as it asked for an order that the receiver should execute a lease or for a discharge in respect of the share of the applicants, it appearing that an order had already been made for partition.(1)

It has been held in England that a receiver cannot raise the rents on slight grounds without the leave of the Court;(2) nor can he abate the rents or forgive the tenants their arrears without the consent of the parties beneficially interested.(3)

An alienation being made *pendente lite*, is not void.(4) The rule as to the effect of a pending suit on the rights of a party to that suit is stated by Lord Cranworth, in *Bellamy v. Sabine*(5) as follows :—"When a litigation is pending between a plaintiff and a defendant as to the right to a particular estate, the necessities of mankind require that the decision of the Court in the suit shall be binding not only upon the litigant parties, but on those who derive title under them by alienation made pending the suit, whether such alienees had or had not notice of the pending proceedings." The cases amount to no more than this, that the suit may be carried on without bringing before the Court a purchaser *pendente lite*. And such purchaser is bound by the decision that may eventually be made against the person from whom he derives title.(6)

In the last mentioned case in which a lease was granted by the receiver, the Court said "Now a receiver has no estate or interest in himself, his power to grant leases is created simply by the order of the Court appointing him, binding and operating upon the estates of those who are parties to that order, and against whom it is made, but not affecting those persons who,

(1) *Suttya v. Golapmoney*. Suit 568 of 1871, Cal. H. C. O. O. C., Cor. Ameer Ali, J. : 5 C. W. N. 27.

(2) *Wynne v. Lord Newborough*, 1 Ves. Jr. 164.

(3) *Kerr*, 244, 246; *Evans v. Taylor*, Sau. and Sc., 681.

(4) *Nilmadhub v. Gillander* 2 Sev., 955.

(5) 26 L. J., Ch. 797.

(6) *Nilmadhub v. Gillander* 2 Sev., 955. See S. 52 of T. P. Act; *Shib v. Lachmi* 56 I. A. 339 : 33 C. W. N. 1091.



like the now defendants were not before the Court. In *Daly v. Kelly*,<sup>(1)</sup> Lord Eldon pointed out that 'if a bond-creditor proceeds against a devisee-at-law, he takes execution against the land, but if he proceeds in equity, he gets satisfaction out of the land by sale for as much is due, and then the conveyance must be executed by him who has the legal estate; and if there is an alienation pending the suit, though that would not prejudice the plaintiff, yet the alienee must be brought before the Court in some shape or other'. In *Gaskell v. Durdon*,<sup>(2)</sup> Lord Manors while asserting the power of the Court to give a plaintiff the benefit of his final decree, by injunction against a purchaser *pendente lite*, points out that he could not compel the tenant to deliver up the lease to be cancelled or direct a re-conveyance without a bill for that purpose against such purchaser. It follows that the Court would not have compelled the now defendants to concur in the lease to Mr. G., without bringing them before the Court, and by parity of reasoning, would not, and could not, have empowered their own officer, the receiver, to grant a lease which would only operate out of the estate of the now defendants without bringing them before it, and giving them an opportunity of being heard. And *a fortiori*, the receiver should not of his own authority be allowed, while the result of the suit was yet uncertain, to take upon himself to grant a lease to operate out of the purchased estate, and in effect, defeat it."<sup>(3)</sup>

If, after a receiver has been appointed, a person has entered into an agreement to take a lease an action need not be brought to restrain the lessee from committing waste; the Court will, upon the application of the plaintiff in the cause, grant an injunction on motion in a summary way though he was not a party to the suit.<sup>(4)</sup>

Under O. XL, r. 1, cl. (d) of the Code the Court may confer on a receiver all such powers for the realisation of properties and the execution of documents as the owner has. In a partition-suit in which a receiver is authorized to sell properties, there can be no difficulty in directing him to convey

(g) Sales.

(1) 4 Dow, 435.

(2) 2 Ball and Beaty, 170.

(3) *Nilmadhub v. Gillander* 2 Sev., 956, 957.

(4) Kerr, 251.



the properties. The receiver may be, therefore, directed to execute a conveyance including the share of an infant defendant.

In all sales, whether by the Court or under the Court or by direction of the Court out of Court, the purchaser is bound to satisfy himself of the value, quantity and title of the thing sold, just as much as if he were purchasing the same under a private contract. The sale-certificate does not transfer the title; it is evidence of the transfer.(1)

A sale by the receiver made under the order of Court, cannot in the absence of fraud be attacked collaterally by persons who were parties to the proceedings or their representatives.(2)

When a suit has been dismissed, the Court has no jurisdiction to give the receiver any fresh power as for instance liberty to sell.(3)

A receiver cannot purchase the property of which he is the receiver without the sanction of the Court, even where the sale is made, not under a decree in the action, but by a mortgagee selling with leave outside the action.(4)

In the undermentioned case the practice of the Original Side of the High Court was followed in recognising the right of a purchaser at a receiver's sale to obtain the assistance of the Court in obtaining possession under the provisions of the Code relating to sales in a suit.(5)

In, however, a previous case where an application was made by the Court Receiver, the Court (Macpherson, J.) observed as follows :—‘This is an application made upon petition by Mr. H., the Court Receiver, for an order that the purchaser of certain property which

Chandranath  
Biswas v.  
Biswanath  
Biswas.

(1) *Basir v. Hafez* 43 Cal. 124 referring to (i) *Minatoonessa v. Khatoonessa* 21 C. 479, (ii) *Golam v. Fatema* 16 C. W. N. 394 and (iii) *Davis v. Ingram* (1897) 1 Ch. 477.

(2) *Gora Chand v. Makhan* 6 C. L. J. 404, 408 : 11 C. W. N. 489.

(3) *Rabeholm v. Smith* 34 C. 336.

(4) *Nugent v. Nugent* (1907), 2 Ch., 292; *Jiteswari v. Sudha* 59 C. 956 : 36 C. W. N. 125 : 1932 C. 672.

(5) *Minatoonessa v. Khatoonessa* 21 C. 479 referred to in *Basir v. Hafez* 43 C. 124; *Golam v. Fatema* 16 C. W. N. 394.



was sold by the receiver, under an order of Court, do complete the purchase according to the conditions of sale ; and that, in default, he may be attached, or a re-sale of the property at his risk may be ordered. The application is opposed on various grounds. The first is that the sale not being by the Court, the receiver has no right to make a summary application of this description but must enforce his rights, such as they are, by bringing a suit against the purchaser. For the receiver it is contended that, as he is an officer of the Court, and the sale took place under an order of Court, the application is properly made. It is clear that the Court cannot act against a person who is not a party on the record, unless he has come in and done some act which subjects him to the jurisdiction of the Court in the suit. The purchaser's position thus depends on whether the contract he entered into was entered into in the course of a sale by the Court or of a sale by an individual only. In no book of practice can I find any authority for saying that a sale of property by a receiver is, in any sense, a sale by the Court ; and nowhere do I find that a sale by a receiver has been treated as a sale by the Court. But it is true that, in some cases, sales by a receiver have been confirmed by this Court, preparatory to possession being ordered to be delivered to the purchaser,—the receiver not being at liberty to give possession without an order. An instance of this occurred on the 21st of December 1918 when an order was made in the suit of *Monmothonth Dey v. Ashutosh Dey*, confirming a sale by the receiver and ordering the purchaser to be put in possession. A consideration of the course adopted in the present instance and in other cases in which the sale is made, not by the Court, but by third parties by the permission of the Court, leads me to conclude that the two classes of sales stand on quite different footings. When a sale is by the Court, the ordinary decree is simply that the property be sold with approbation of the Court. The order made in this case is an order, by consent of all parties, that the receiver be at liberty to sell, and do sell, 'for the best price he can get for the same by public sale, with the privity, consent, and concurrence of the solicitors of the plaintiff and of the defendants,'—the power given to the receiver being independent of any further interference by the Court, save that the conveyance is to be settled by a Judge if the parties differ. When the sale is by the Court, the Registrar, following the practice



of the Master, inquires into the title with a view to preparing the conditions of the sale. And after the sale, a purchaser who has not accepted the title is entitled to have an enquiry as to the title, and the Court will not knowingly pass off an absolutely bad title by means of special conditions. The receiver being empowered to sell with the consent of the parties, is under no restrictions whatever in this respect. In saying this, I do not mean to say that sales by the Court do not often, under special circumstances, take place under conditions similar to those under which the sale, which is the subject of this application, was made. When the receiver sells under such an order, he joins in the conveyance; being receiver in possession it is practically necessary he should do so; and the conditions of sale in this instance show that the receiver intended to join. When, however, the sale is by the Court, the parties alone convey, and the officer of the Court does not join. Finally, when the sale is by the Court, if the purchaser fails to complete, and the interference of the Court becomes necessary, one of the parties to the suit is the proper person to apply (and is the person who in practice does always apply) to the Court, and put the Court in motion. The Registrar or officer conducting the sale on behalf of the Court never applies. Here the receiver applies himself showing thus that he does not consider that his position is the same as that of the Registrar conducting a sale held by order of Court. The fact that Mr. Hogg is the Court Receiver does not, as it seems to me, place him in a different position from that which any other person appointed receiver in the suit would have filled. The application must be dismissed with costs, as being one which ought not to have been made in this form.”(1)

In a subsequent suit *Phear, J.*, referring to this decision said : “Mr. Justice Macpherson dismissed the application with costs, as I think, very properly. But in the course of the judgment which he delivered on that occasion, he made some observations, which are not altogether consistent with the view of the receiver’s functions

*Wikinson v. Gangadhar Sircar.*

---

(1) *Chandranath v. Biswanath* 6 6 B. L. R. 492 (1870).



which I entertain. He thought that, when the receiver sells under an order of Court, inasmuch as he is in possession of the property, it is practically necessary that he should join in the conveyance. I must say I have a very strong opinion that this is not so. It is not necessary that any one should join in a conveyance of property, simply because he is in possession of it, though it is always necessary that he should be joined when he has any interest in it, which would be the case of course if he has any possession by right of lien ; and I think it probable that it was possession of this sort which was present to Mr. Justice Macpherson's mind when he delivered that judgment.

“But the receiver's possession, as I have already said, is not possession by any personal right. It is the possession of the Court, and he is totally devoid of any interest in the property. It appears to me that the order of the Court that the property should be sold by the receiver does not impose any liability or responsibility on the receiver, which is not borne by the officer of the Court, who usually carries out orders for sale in the absence of any express nomination of the person who should do so. I apprehend that the order of the Court that the property in suit should be sold is merely operative on the parties to the suit. It binds them, willing or unwilling, to the sale of the property which will be made under the order. Some one must, of course, act, as the agent ; and when any of the owners abstain from taking part in it, or are under any disqualification, the person must be someone appointed by the Court. The order that the receiver do sell specifies that the receiver is to sell instead of the ordinary officer of the Court.”(1)

In, however, the case already cited(2) in which the purchaser obtained a rule calling upon the parties to show cause why he as purchaser at the receiver's sale should not be put into possession, the Court (Sale, J.) said :  
 “The only point remaining to be determined is as to whether in the circumstances I ought to make an order for possession to be given to the purchaser. The question

(1) *Wilkinson v. Gangadhar* 3 B. L. R. 493, 494 (1871).

(2) *Minatoonessa v. Khatoonessa* 21 C. 479.



depends on whether a purchaser from a receiver is entitled to be put in the same position as a purchaser at a sale by the Registrar, or at an execution-sale under the provisions of the Civil Procedure Code. A sale by the Registrar is made under an order of the Court, and is binding on all parties to the suit. So is a sale by a receiver. In what particular, then, does it differ from a sale by the Registrar? In the case of *Chandranath Biswas v. Biswanath Biswas*(1) it appears that an application was made by a receiver to compel a defaulting purchaser to come in and complete his purchase. The learned Judge (Macpherson, J.) held that the application was irregular in form and dismissed it, but in the course of his judgment he made observations which seems to show that he considered that a sale by a receiver stood on a different footing from a sale by the Registrar. If that were so, and if a sale by a receiver under an order of Court differs in no respect from a private sale, a purchaser at a receiver's sale can only obtain possession adversely by a suit for possession against any person withholding possession, even though such person should be a party to the suit and bound by the order for sale, and by it concluded and estopped from making any difference. But there are cases in this Court in which sales by a receiver have been regarded as sales by the Court, and orders for possession have been obtained by the purchasers under the Code. In one instance, where property was attached in the hands of a receiver, the Court ordered the property to be sold by the receiver instead of by the Sheriff, and the subsequent proceedings were precisely similar to those which take place in execution-sale by the Sheriff.(2) In another case, a mortgage-suit, the receiver, instead of the Registrar, was ordered to sell the property comprised in the mortgage, *viz.*, a family dwelling-house in the occupation of the defendant who was the widow and executrix of the deceased proprietor. After the sale, an order was obtained by the purchaser on notice, that a conveyance be executed by the Registrar for and in the name of the defendant, and that the Sheriff do in the manner provided for by s. 318 of the Code deliver over possession to the purchaser.(3)

(1) 6 B. L. R. 492 (1870).

(2) *Pertab v. Bhoobun* Suit No. 144 of 1884, Order dated 30th July, 1883.

(3) *Herumbo v. Mohalucky* Suit No. 100 of 1883, Order dated 8th December 1888.



A similar order was made in an administration-suit in which the receiver appointed in the suit, instead of the Registrar, was directed to sell. In that case, on the application of the purchaser, an order was made confirming the sale and directing possession to be given to the purchaser. This was followed by an order directing the Sheriff to put the purchaser in possession.(1) In another case, an administration suit, in which property was sold by the receiver under a decree of Court, an order was made, under the provisions of the Code, for the execution of the conveyance by the parties to the suit, or, if they should fail to comply with the order, by the Registrar for them and in their names.(2) In Suit No. 118 of 1884, *Roy Chand Dutt v. Shamlall Soor*, a sale by a receiver was treated as a sale by the Court, and a certificate of sale was granted by an order, dated 6th May 1885. These are unreported cases, a note of which has been furnished by the Registrar.

They show that sale by receivers under the direction of the Court have been treated as sales by the Court. And when sales by receivers are in all essential particulars similar to sales by the Registrar, I confess I can see no reason why they should not be treated as sales by the Court. They have not, it is true, been provided for by the rules of the Court. Being of an exceptional character, it was probably not thought necessary to provide for them by any special rules. But if they are sales by a Civil Court in a suit, the procedure prescribed by the Code for sales in a suit would be applicable. It should be observed that the procedure by the Code is applicable not only to a suit, but also to miscellaneous proceedings, the intention being that it should be as widely applicable as possible ; see s. 647 (now s. 141) of the Code. An important fact in the present case is that this particular sale has been already treated as a sale by the Court, the Registrar having been directed, under the provisions of the Code, to execute the conveyance on behalf of some of the parties to the suit. The practice followed in these cases shows that this Court has recognized the right of a purchaser at a receiver's

---

(1) Suit No. 27 of 1889, Orders of 29th August 1889 and 22nd November, 1889.

(2) *Broughton v. Ashraff* Suit No. 694 of 1879, Order dated 12th September, 1893.



sale to invoke the assistance of the Court in obtaining possession under the provisions of the Code. On the materials before me, it sufficiently appears that possession has not been obtained by the purchaser of all the properties purchased by him. I must, therefore, make an order for possession in his favour. This order will supersede the previous order for possession made in favour of the receiver.”(1) More recently it has been held referring to this case, that a sale by a receiver under direction of Court is not a sale by Court, and in such a sale the Court does not grant a sale-certificate nor does it confirm the sale.(2)

In the undermentioned suit(3) the defendant mortgaged certain properties, which he took under the Will of his father to the plaintiff. Plaintiff brought this suit on the mortgage and obtained a decree and an order for sale by the Registrar. In the meantime a suit for administration of the testator's property had been filed and an order made in that suit appointing a receiver. Plaintiff then applied that the sale of the mortgage-properties might be held by the receiver appointed in the administration-suit instead of by the Registrar. The administration-suit was still pending, and administration of the testator's estate had not been completed. *Held*, that the sale could not be held by the receiver before the completion of the administration ; and that till such completion of administration it could not be said that the defendant was entitled to the mortgaged properties.

Liens upon property held by a receiver are not divested by virtue of a sale made by him. If the order of sale makes no mention of prior encumbrances the sale passes the title to the property as it is in the receiver and subject to whatever incumbrances there may be existing upon it. A purchaser at a receiver's sale may, therefore, question either the validity of the encumbrances or of the amount due thereunder. Such purchaser is presumed to know that the receiver can sell only such interest in the property as is possessed by the parties to the action in

(1) *Minatoonessa v. Khatoonessa* 21 C. 481, 482 and 483.

(2) *Golam v. Fatima* 16 C. W. N.

394 ; 1957 M. 763 (O.21 does not apply) ; 1960 S. C. 297.

(3) *Netai v. Ashutosh* 5 C. W. N. 408.



which he is appointed. He must ascertain for himself what that interest is, and he takes the property subject to the liens upon it.(1) Ordinarily a receiver will not be given leave to bid at a sale by the Court of the property subject to the receivership and cannot, it would seem without the special leave of the Court, purchase either directly or indirectly in the name of a trustee for himself any property or interest in any property over which he is receiver.(2) Whenever any estate or share of an estate situate outside Calcutta has been sold by the Official Receiver, such sale shall be notified by him to the Collector of the District in which such estate or share of an estate is situated.(3)

The question as to liberty to bid arose in the suit of *Promothonath Gangooly v. Khetter Nath Banerjee* (Suit 879 of 1900, Cal. H. C.) an order for reference to the Official Referee was made on the 1st June 1903. The report of the Official Referee was as follows :—

“In this case it was referred to the Registrar and by a subsequent order of transfer of the reference to me to enquire and report whether two matters would be for the benefit of the infant plaintiff in this suit.

1. Whether the receiver should have liberty to bid for and purchase certain properties set out in the schedule to the petition ; and,

2. Whether he should be at liberty to pay a sum of Rs. 206 to one K.N.B.

From the evidence placed before me it appears that the properties mentioned in the schedule to the petition are properties which were mortgaged to the testator in respect of which suits have been instituted and decrees obtained. In those suits either the receiver is himself the plaintiff or he has been given the conduct of the proceedings.

(1) See Beach, Receivers, §§ 732—735, and *Gora Chand v. Makhan* 6 C. L. J. 404, 409.

(2) Kerr, 207, 263, 277, 278 ; see Belchambers' Rules and Orders, p. 220, citing *Gunnassur Lal v.*

*Khoob Narain*, Sept. 3, 1886, where a receiver obtained leave to bid. See 36 C. W. N. 125.

(3) Belchambers' Rules and O. 21A. See Chapter XXI, r. 21, Rules and Orders (1914).



The first point is whether liberty can be given to a receiver to bid at a sale. Kerr on Receivers says that leave will not be given to a receiver to bid for property the subject-matter of his receivership. In Belchambers' Rules and Orders in the note to Rule 444 (dealing with leave to bid) (1) it is stated that leave will not be given to, amongst others, a receiver, the authority given being Dart's Vendors and Purchasers. I have looked up Dart and Seton on Decrees where the same thing is laid down and the authority in each instance is the case of *Alven v. Bond* (1 Flannagan and Kelly, p. 196). That case lays it down that a receiver *without special leave of Court* will not be allowed to bid at a sale of property the subject-matter of his receivership, but it is clear that what is meant is that he in his personal capacity cannot be allowed to buy, the reason of course being the same as in the case of a trustee or an executor that he is in a better position to know the value of the property than outsiders. A trustee is bound to use his knowledge for the benefit of his *cestui que trust*, and as in many cases it might be impossible for the Court to discover the real value of the property, that being only within the trustee's knowledge, it has been laid down that he may not buy. In *Alven v. Bond* there was a lead mine on the property of which the receiver was aware, and he got someone else to buy in trust as regards one-third for himself and the sale was set aside.

Mr. Belchambers cites an unreported case of *Gunneshur Lal v. Khoob Narain* stating that in that case a receiver obtained leave to bid. I have looked up the petition and order in that case and find that the receiver, Mr. M., Court Receiver and receiver in that suit, only obtained liberty to apply to the Court of the Sub-Judge at Chupra (in whose Court the proceedings were) for leave to bid, the ground being that collusion between the judgment-debtor and purchasers was anticipated.

In the present case the receiver does not desire to bid for or purchase the property for himself personally, but he desires as receiver of the estate to have this leave in order to prevent the properties being sold at an undervalue. Evidence has been given which shows that in some cases the property

(1) See Chapter XXVII, r. 54.

Rules and Orders (1914).



has been put up to sale but not sold as the selling officer did not consider a sufficient price had been offered. In other cases it has been shown that the amounts due on the decrees exceed the estimated value of the properties. In other cases where the properties mortgaged are adjacent to a *hat* belonging to the estate it would be for the advantage of the estate to secure the properties and also to the advantage of the mortgagors to keep off bidders so that they might either retain possession as long as possible or buy themselves if the properties were going at a low value. Having regard to the evidence placed before me, I think that it would be for the benefit of the infant and the estate generally if the receiver had liberty to apply in each case to the proper Court for leave to bid, provided that in each case his bid does not exceed the amount due to him for principal, interest and costs in the suit in which the sale is taking place. This proviso will safeguard the estate inasmuch as it will not be necessary to pay out any extra money.

On the second part of the reference it has been shown that there is due to K. N. B., an old *gomastah* who was in the service of the testator for many years, a sum of Rs. 164.

By an arrangement with the testator he allowed so much of his salary as he did not need to remain in deposit with the latter and at the latter's death there was Rs. 164 due. The *gomasta* did ask the executor for it, but was told he had better let it remain as before to which he consented as he still served the executor. When the receiver was appointed his services were dispensed with, so he demanded payment and unless paid would be driven to a suit. There can be no doubt I think that the money is due to him and to save the costs of litigation the receiver should have liberty to pay the amount I have mentioned."

This report was confirmed by the Court on the 4th June, 1903.

If a receiver requires money to enable him to discharge his duties the Court will give him leave to borrow upon the security of the property in his hands.<sup>(1)</sup> In consi-<sup>(h)</sup> Borrowing dering in the case of receivers the question whether a power to raise money on the property itself may be necessary for its own

(1) Kerr, 297, see *Greenwood v. Algeiras Railway Co.* (1894), 2

Ch. 205; *Bhadrabati v. Jibanmal* 45 C. W. N. 68.



preservation regard must be had to the conditions under which estates are held in this country, one of which is that they are liable to be sold if the rents and revenue due upon them are not paid; and when that fact is appreciated, it is apparent that the power to take the estates out of the hands of the owners and to place it in the hands of a receiver with power to do what is necessary for its protection must include a power to raise money to pay rent or revenue when it is necessary to do so; as to hold otherwise would be to hold that a receiver appointed to protect the estate could not interfere to prevent its being lost to the parties interested, although his appointment put it out of their power to protect it themselves.(1) Where it is necessary for the preservation of the estate it has always been taken to be law that the Court may authorise the receiver to charge the property. The Court, if it can appoint a receiver, has ample powers to provide for the management of the property; and if the property is in danger of being lost, the Court has power to prevent such loss by raising money on it. The Court can deal with property which is under its control just as completely as the owner of the property can deal with it. How far the Court ought to allow a sale or pledge of course depends upon the circumstances of each case.(2) In a suit for partition the Court has jurisdiction to place the whole of a joint estate out of which a plaintiff seeks to have his share partitioned in the hands of a receiver and to order that a receiver so appointed shall be at liberty to raise money on the security of the whole of such joint estate.(3) Liberty will be given of course to borrow not merely to avoid the loss above mentioned, but whenever it may become necessary for the proper management of the estate.(4)

Where a receiver of joint property mortgaged that property to another after a money decree had been obtained against the owners, but had executed the mortgage previous to the attachment, *held* that the attaching creditors were not entitled to priority

---

(1) *Poresh v. Omerto* 17 C. 614, 619 (1890), referred to in *Gora Chand v. Makhan* 6 C. L. J. 404.  
(2) *Ib.*, 615.

(3) *Poresh v. Omerto* 17 C. 614.  
(4) See *Mohari Bibee v. Shama Bibee*, 7 C. W. N., cclxviii (1903).



over the mortgagee.(1) Some of the parties pending suit for partition having created an equitable mortgage over certain properties in suit, which properties subsequently vested in a receiver, who by an order of Court mortgaged the property to another person the Court directing that such mortgage, being for the preservation of the estate, should take precedence of all other incumbrances; *held*, such mortgage took priority over the equitable mortgage. When the later mortgage was made under an order of Court directing that it should be prior to all other charges, and that order has never been set aside, it takes precedence over the earlier mortgage.(2)

Where advances for the preservation of a limited company's assets are made to a receiver and manager by a party to a debenture-holder's action under an order of Court which directs that the sums advanced shall be a first charge on the assets in priority to the debenture-holders; and the receiver borrows money from the plaintiffs and the charge executed by the receiver expressly stipulates that he should not be personally liable to repay the sum advanced out of his own money, but makes no express reservation of his right to be indemnified out of the assets in respect of his costs and expenses properly incurred, the receiver is nevertheless entitled to take such costs and expenses out of the assets in priority to the sums advanced if it appears that the true bargain was that the assets should be realized by the receiver for the benefit of all concerned. But whether the same rule applies where the person making the advance is a stranger to the action, *quære*. A receiver, although appointed by the Court, and for the benefit of debenture-holders is not the agent to contract, either of the Court or of anybody else, but is a principal. An order in a debenture-holder's action giving the receiver liberty to borrow money for the preservation of the property comprised in the debentures, and to charge the same on the property, should expressly state whether the charge is to be subject to or free from the receiver's right of indemnity.(3)

(1) *Herumbo v. Satish* 33 C. 1175.

(2) *Girdhari v. Paresh* 4 C. L. J. 495, 501, 506, 508.

(3) *In re Glasdir Copper Mines* Lt. [1905], 1 Ch. 365.



In June 1901, the purchaser, under a contract for the sale of land (which was to be completed on September 29th) paid a deposit and was let into possession. The purchaser did not complete at the time appointed, and litigation ensued between him and the vendor. In August 1902 a judgment-creditor of the purchaser obtained an order appointing himself, upon giving security, receiver of the rents, etc., receivable in respect of the purchaser's interest in the land under the contract for sale. Notice of this order was at once served on the vendor, and the order was registered under the Land Charges Registration and Searches Act, 1888, and the Land Charges Act, 1900, but the creditor did not perfect his security as receiver until May 1903. Meanwhile in January 1903, the litigation between the purchaser and vendor was compromised, a consent order being made for the rescission of the contract of sale and the delivery of possession of the property by the purchaser on payment of £110 to him by the vendor. In May 1903 the judgment-creditor commenced an action against the vendor claiming a declaration that by virtue of the receivership order he was entitled to a lien or charge on the property for securing payment of the judgment-debt and costs, with interest, and claiming also payment of the judgment-debt and costs by the defendant. *Held*, the vendor was not a trustee for the purchaser of the land, and that the purchaser's interest under the contract was not such an interest in land as that the receivership order operated as a charge upon it. *Held*, also that as the judgment-creditor did not perfect his security as receiver until after the compromise, he had no claim against the vendor in respect of the £110. *Seemle*, the result would have been the same even if the £110 had been given in part repayment of the deposit.(1) An amount borrowed at a high rate of interest by the receiver and paid to a certain person as a bribe to the police to obtain a release of the minor from custody, for which a receipt was taken from him (the minor) and the money was credited in his (minor's) accounts, is, as regards

(1) *Ridout v. Fowler* [1904], 1 Ch. 658. On appeal this decision was approved but on the short ground that the £110 was not paid to the purchaser as the price of any interest which he had in the land,

but on the basis that he had no interest and only for the purpose of getting him out of possession, and therefore the judgment-creditor had no claim against the vendor: s. c. [1904], 2 Ch. 93.



the minor, an unauthorised expenditure and the receiver is not entitled to set up a claim as to the amount against the payee.(1) Power to collect outstandings and to do what is necessary to realise and preserve assets of a firm does not confer power to mortgage its property.(2)

When the ascertainment of an estate has been placed by the decree in the hands of a Commissioner, it is inconvenient and irregular to ask a Judge to (i) Payment. decide that there is a particular charge upon it, or debt due in respect of it. In many cases it might cause injustice to others for a Judge to make such an order. If the decree does not contain a direction to the Commissioners to ascertain what are the charges on the property and the debts due in respect of it, the proper course is to obtain a supplementary direction to that effect. Where therefore a receiver had been appointed, but no power had been reserved to him to pay debts due by the estate, an application, therefore, by a plaintiff that a receiver should satisfy out of the moneys in his hands to the credit of the suit, the claims of two creditors were refused.(3) Upon such refusal, however, the plaintiff *ore tenus* asked for an order that the above claims should be paid out of the plaintiff's share leaving the question whether they ought to be paid out of the whole estate to be determined in the office of the Commissioner when the proper time for ascertaining that fact arrived. Upon such application the Court (Farran, J.) said :—

“I have, I think, undoubted jurisdiction to make an order for payment of these sums out of the plaintiff's share. From early times it was the practice of the Court of Chancery in England to make such orders, but the Court seems to have exercised the power very sparingly, and only in very special cases, and under special conditions. The authorities are collected in Daniell's Chancery Practice (6th Ed.), p. 988, note (o). The Statute 15 & 16 Vict, c. 86 s. 57, widened and extended this power of the Court by enacting that whenever any real or personal property forms the subject of any

*Motivahu v. Premvahu.*

(1) *Barada v. Rashmani* 20 C. L. J. 113 : 28 I. C. 25.

(2) *Subramanian v. Lutchman* 50 I. A. 77 : 28 C. W. N. 1. Cf. *Rameswar v. Hitendra* 1924 P. C.

202 : 29 C. W. N. 413 (power of sale).

(3) *Motivahu v. Premvahu* 16 B. 511.



proceedings in Chancery and the Judge is satisfied that the same is more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the Judge may, at any time after the commencement of such proceedings, allow to the parties interested therein, or to any one or more of them, the whole or part of the annual income of the real estate, or part of such personal property, or a part or the whole, of the income thereof. A corresponding Act was passed for the Supreme Courts in India, Act VI of 1854, s. 35 of which gave these Courts similar powers. That Act has been repealed by Act VIII of 1868, but the repeal (s. 1) does not affect any practice or procedure directed by it.

“My jurisdiction, therefore, to make the order is clear. The order is not, as a rule, made, unless there is some pressing reason for it, and the Court can see that the parties are clearly entitled. In this case the title of the plaintiff to half the property is established by the decree. The property is considerable. It consists of a house in Bazar Gate Street, which was purchased for Rs. 35,000 and there are about Rs. 10,000 in the hands of the receiver. It is not suggested that there are any charges on this property, or debts due in respect of it, save the debts, the subject of this motion. *A. L.*, has obtained a decree against the plaintiff for about Rs. 3,000 and costs, which he threatens to enforce by attachment. There is strong reason for believing that the debt is payable out of the joint property. There is also a small claim for about Rs. 400, due to *M. I.*, which is in nearly the same position, though no decree has been obtained in respect of it. These claims bear interest, while the plaintiff's moneys in the hands of the receiver bear none. The decree in this suit was, as I have said, made in February 1891, but the directions contained in it have not been proceeded with, because the defendants are quarrelling as to who is to take out probate to the will of *P.*, and till that is done, the suit is at a standstill. It is difficult to conceive a greater case of hardship on the plaintiff. The order asked for by her should, therefore, if possible, be made.”

The Court then made an order in the following terms :—  
“That the receiver do pay, out of the funds in his hands, the claims of *A. L.*, and *M. I.*, but such payments are not to



extend beyond a half share of such funds ; and let such payments be debited against the plaintiff's share in the property, the subject-matter of the suit, without prejudice to the plaintiff's contending and proving to the Commissioner or the Court, when the directions contained in the decree are being carried out, that such claims were claims charged upon, or payable out of the joint-estate."(1)

In the case last cited it was also held that where the notice of motion asks for an order in particular terms and the applicant upon such order being refused asks *ore tenus* for an order in different terms which was not asked for by the notice of motion had in connection with the affidavits filed in support thereof, the Court will only make such order if the opposing party is not taken by surprise and does not consider that he can adduce further facts or arguments. If such be the case leave will be given to the applicant to amend his notice of motion and the hearing will be adjourned.(2)

As regards payment of money or delivery of property to the receiver under an order, the latter usually provides that the receipt or receipts of the receiver shall be a sufficient discharge for all such sum or sums of money or property as shall be paid or delivered to him as such receiver.

An order may be made requiring the receiver to advance a sum of money to one of the parties to the suit for his defence. Ordinarily when money is so advanced provision is ultimately made for it in the decree. If the plaintiff succeeds in a suit, the money which he has been required to advance for the defence conducted on behalf of a minor defendant is recoverable as part of the costs of the plaintiff.(3)

An order directing a receiver in a suit to advance money to a guardian *ad litem* to enable him to conduct the

(1) *Motivahu v. Premvahu* 16 B. 511.

(2) *Ibid.*

(3) *Kuppusami v. Rathnavelu* 24 M. 511. In the Goods of *Gopal Lall Seal*, Suit No. 11 of 1902, Cal. H. C., the Court (Ameer Ali, J.) made an order that the administrator *pendente lite* should pay a

certain amount to be fixed by the Registrar to each of the widows of the deceased claiming as his heiresses in case of intestacy for their costs of suit in contesting an alleged will propounded by the executor thereunder who contested such payment. Order March 9, 1903.



defence on behalf of a defendant is not a judgment within the meaning of Article 15 of the Letters Patent and no appeal lies therefrom.(1)

Receipts granted by an infant for payments made to him by the receiver in excess of the sanctioned amount of monthly expenses and which were not shown to be applied for his benefit, do not constitute a valid discharge, and neither the minor nor his representative is liable to be charged with the sums so advanced.(2)

If a receiver has power to pay debts he may pay an instalment of a debt even though the effect of his so doing may be to stop limitation from running.(3) But a payment made by a receiver which is not authorised by the order appointing him will not stop the Statute from running.(4) A receiver appointed on behalf of a mortgagee is the "agent" of the mortgagor within 3 & 4 Wm. IV, c. 27, s. 40, and a payment of interest by him stops the Statute.(5)

A receiver upon whom the Court has conferred all the powers of realisation that an owner has, can himself give a discharge in respect of a debt. He is not fettered by the restrictions which are laid upon any one of several joint creditors or upon a next friend. Where a decree on a bond was passed on 5th August, 1904, in favour of the plaintiffs, some of whom were minors, the suit having been filed on 21st June, 1904, through their manager and *Ammukhtear*, who was appointed receiver by the District Judge on 15th September, 1905, in a suit between the plaintiffs and was put in charge of the whole business of the plaintiffs with all its "pending and impending litigation," and a receiver was in charge from that time onwards; and no steps were taken in execution of the decree until 11th May, 1910, when one of the minors applied for execution alleging that he had attained majority on 5th June, 1907 : *Held*, that the application for execution was barred by limitation. That the decretal debt vested in the receiver when he was appointed on 15th September, 1905, and from that date

(1) *Kuppusami v. Rathnavelu* 24 M. 511.

(2) *Barada v. Rashmani* 20 C. L. J. 113 (*Jagat Tarini v. Naba Gopal* 34 C. 305 referred to.)

(3) *Re Hale, Lilley v. Ford* (1899), 2 Ch. 107.

(4) *Whitley v. Lowe*, 25 Beav. 421; 2 D. & J., 704.

(5) *Chinnery v. Evans* 11 H. L. C., 115; *Kerr*, 192.



onwards he was competent to give a discharge ; when once the debt had vested in him the minority of one or more of the decree-holders ceased to have any importance for the rights of the minor no less than the rights of the majors were all absorbed by the receiver.(1)

The question whether an application to enforce execution of a decree was barred by limitation depended upon whether a payment out of Court to plaintiffs of money collected by a receiver constituted (with the application alleged to have preceded it) a step in aid of execution within the meaning of Article 179 of Schedule II to the Limitation Act. The receiver had been appointed during the pendency of the suit, which was by mortgagees for possession of the mortgaged land and for mesne profits accrued prior to the date of plaint. The receiver remained in possession of the land for a period of six months after decree, when he handed it over to the plaintiffs ; and the payment out of Court above referred to was of money which had apparently been collected by the receiver during the said six months, and formed no part of the mesne profits dealt with by the decree. *Held* that such money was not collected or paid in execution of the decree, though the plaintiffs had become entitled to it as a consequence of the decree. It consisted of current profits of the estate, in demanding which plaintiffs had done nothing towards execution of the decree which did not deal with such profits, and which could be fully executed without reference to them. And *held* therefore that the payment referred to did not constitute a step in aid of execution, and that the application was barred by Article 179 of Schedule II of the Limitation Act.(2) A receiver, it has been held, is a trustee for the parties interested of any money due from him as receiver and not accounted for by him and cannot, as against such parties, avail himself of the Statute of Limitations although his final accounts have been passed and the recognizances vacated.(3) Where on the face of the account book of the judgment-debtor it appears that a temporary loan was taken for purposes of accommodation from the funds of the receiver, it was his duty to pay back that money into

(1) *Girija v. Kanhaya* 18 C. W. N. 138 : 20 I. C. 701.

(2) *Appasami v. Jotha* 22 M. 448.

(3) *Seagram v. Tuck* 18 Ch. D. 296. See 1927 R. 334 ; 40 C. W. N. 479.



the hands of the receiver himself; and the Court cannot recognise a payment alleged to have been made to any other officer. The Court can make an order of repayment to the receiver.(1)

Though ordinarily a suit can be brought only by a person in whom there is a present title to sue and by his appointment no property becomes vested in a receiver, this rule is subject to modification by the Legislature and the Code empowers the Court to confer upon a receiver all such powers as to bringing and defending suits as the owner himself has.(2)

With regard to suits by a receiver two questions require consideration, namely, as to his right to sue in general and as to the name in which he should sue. One of the most important functions exercised by receivers in the discharge of their official duties is that of bringing such actions as may be necessary to the proper discharge of their trust as well as to secure and protect the assets and funds to whose control they are entitled by virtue of their appointment.(3) As a general rule all rights of action which belong to the party whose property is put into the hands of a receiver are transferred to the latter by virtue of his appointment.(4) The appointment does not affect existing contracts or rights of action between the party whose property is placed in the hands of the receiver and others: he has no greater rights or advantages than those possessed by his principal.(5) A receiver, therefore, cannot maintain an action upon a note or obligation running to the original party which he himself could not have maintained.(6) His right of action relates back to the beginning of the title in the party for whose property he is receiver: if substituted in place of the owners of the property he acquires all their rights by subrogation.(7) Inasmuch as for the purpose of actions and suits connected with their receivership, receivers occupy substantially the same relation which was

(1) *Chandra Sikhar v. Hari* 15 C. L. J. 254: 10 I. C. 898.

(2) *Kassim v. Dutt* 19 C. W. N. 45; even if it involves the setting aside of a voidable instrument executed by one of the co-owners who purports to deal with the entire interest. *Ib.*

(3) High, §§ 200, *et seq.*

(4) Breach, § 663.

(5) *Ib.*, § 664; High, § 204.

(6) *Williams v. Babcock* 25 Barb., 109 (Amer.); *Bell v. Shibley* 33 Barb., 610 (Amer.)

(7) Beach, § 667.



occupied by the original parties against whom or over whose estate they were appointed, any defence which a defendant might have made to an action brought by the original party in interest is equally available and may be made with like effect when the action is instituted by the receiver.(1) In a suit by a receiver appointed to collect the debts due to a person, the defendant can urge all defences which he could have urged against the person really entitled to the debt; and paragraph 3 to s. 111 (now O. VIII, r. 6) was held not to apply to a case where the sum claimed to be set off was not "legally recoverable" as against the receiver; and the written statement need not be stamped as a plaint.(2) The fact that a person is an officer of the Court entitles him to no privileges not accorded to other suitors, and in seeking relief he must commence his actions by the same process that other suitors are required to employ.(3) A receiver's liability for costs in actions instituted by him on behalf of the estate is similar to that of any other trustee—as, e.g., an executor or administrator—who sues for the interest of an estate, but being an officer of the Court, he usually receives special consideration.(4) Should he fail in his action he will of course be directed to pay the costs of the defendant, but as between himself and the estate he represents, he will, if he has acted properly with care and in good faith, be allowed his costs out of any funds which are in, or may come to, his hands.(5) Such an order in favour of a receiver will, however, generally only be made in the suit in which he has been appointed and not in the suit brought by him, unless in such latter suit the estate which he represents is fully before the Court. So in a suit to have it declared that a lease which was executed by a receiver in favour of the plaintiff was a valid and subsisting lease, the Court held in favour of the plaintiff and granted the latter his costs as against the receiver, and with regard to the costs of the receiver observed as follows:—"But having regard to the way the dispute arose between the parties and the way in which it was conducted, I can see nothing wrong or improper in the defendant

(1) High, § 205; Beach, §§ 699—706.

(2) *Subramanian v. Muthuswami* 17 M. L. J. 481 (1907).

(3) Beach, § 665; Verification of

plaint by receiver's muktear is probably sufficient. *Drobomoyi v. Davis* 14 C. 339.

(4) Beach, § 679.

(5) See *Ib.*, Seton, 4th Ed., 442.



in exercising what he thought to be his rights, and I am of opinion that he considered that he was acting in the best interests of the estate. If the latter were before me, I would say he was rightly entitled to be recouped out of the estate. But as the estate is not before me, I cannot make the order which I should otherwise have made. But doubtless this expression of my opinion will be sufficient now. The plaintiff must, of course, have his costs of suit on scale No. 2. Any application which the receiver may hereafter make as to the payment of his costs I shall be glad to consider.'(1)

Since, however, a receiver sues in a representative capacity and not in his personal right, it is necessary that he should not only set out in his pleading the right of the party whom he represents, but also the authority under which he assumes to act; and generally it is essential that he do this by showing in a way capable of being traversed, his appointment by a Court of competent jurisdiction in a case within its jurisdiction and that he has its authority to prosecute the action. Courts are inclined to the exercise of a strict control over their receivers in the matter of allowing them to bring suits concerning their receivership, and an action brought by a receiver is considered as brought under the order of the Court itself. Under the usual form of High Court order a receiver must not without the leave of the Court bring suits in a District Judge's or Subordinate Judge's Court except suits for rent or institute an appeal in any Court (except from a decree in a rent-suit) when the value of the appeal is over 1,000 rupees. A receiver will not be permitted to abuse the power entrusted to him by unauthorized suits against third persons. If, therefore, a suit is instituted without authority, the parties are entitled to the protection of the Court against such unauthorized proceedings on the part of the receiver who will be directed to discontinue the action.(2) The under-

---

(1) *E. J. King v. Charu Chandra Mittra*, Receiver, to the estate of *Punna Lal Seal, deceased*, Suit 635 of 1897, Cal. High Court Cor. Sale, J., 3 Sept., 1897; costs were also given against the receiver in *Drohomoyi v. Davis* 14 C. 347.

(2) *Beach*, § 693; *High*, §§ 201, 202; as to the necessity for leave,

see *Kerr*, 163—171. In *Dinnonauth v. Hogg*, 2 Hay, 395, 399 it was said that in the absence of evidence the Court will assume that the receiver's suit was instituted by order of the Court. *Sed quo*, it being upon the receiver as plaintiff to establish both his case and authority to sue. As to cases where having an independent



mentioned suit(1) was one by the plaintiff as receiver appointed under an order of Court with authority to sue defendant for money due to a third party. The money was due under an agreement dated 26th August, but by mistake the order referred to the money as being due under an agreement of the 25th October. Plaintiff thereupon applied to amend the order and the plaint. *Held*, plaintiff's authority to bring this suit being dependent on this order no amendment could be made so as to affect this suit. The amendment would only operate as a new order of attachment and a new order for appointment of receiver, and such orders could only operate from the date on which they were made and could not therefore be the basis or authority for the present suit. The usual practice both in England and America(2) and in this country before instituting actions by a receiver in matters connected with his trust is to apply to the Court, from which he derives his appointment, for leave to bring such actions. And although it is frequently the case that the order of appointment in general terms authorizes the receiver to sue for and collect all demands due, yet it is a common and safe practice to first obtain special leave of Court before beginning an action. A receiver does not represent the owner of the estate for which he is receiver, but is merely an officer of the Court and as such cannot sue or be sued except with the permission of the Court.(3) If the receiver wants possession he should put the Court in motion.(4)

An order of appointment of a receiver drawn upon the form prescribed in form 168 of the fourth schedule to the last Code gave a receiver full powers under the provisions of s. 503 of that

---

cause of action the fact that a person is receiver does not disqualify him from suing and in which cases he does not sue in his character of receiver, *see Kerr*, 164.

(1) *Benode v. Raj* 7 C. W. N. 651 : 30 C. 699.

(2) High, § 183.

(3) *Miller v. Ram Ranjan* 10 C. 1014. In the subsequent case, *Hari Dass v. Macgregor* 18 C. 447, 481, the Court stating that it had been

referred to the former case, said that it did not altogether agree with the general terms of that decision. In what respect the Court disagreed is not stated, but it is a wellnigh universal rule in all Courts that a receiver may not bring any suit without having first obtained leave of the Court. Beach, § 650, *Jyotirmoy v. Biswanath* 53 C. W. N. 713.

(4) *Ram Lochun v. Hogg* 10 W. R. 430, 431 (1868).



Code. Where, however, the order was not drawn up in that form, instead of having full powers under s. 503, the receiver had the limited powers expressly given by the order of appointment.(1) Where, therefore, *D* was appointed receiver in a partition-suit pending in the High Court by an order which, amongst other things, gave him power to let and set the immovable property, or any part thereof as he should think fit and to take and use all such lawful and equitable means and remedies for recovering, realizing and obtaining *payment* of the rents, issues and profits of the said immovable property and of the outstanding *debts* and *claims* by action, suit or otherwise as should be expedient, and *D* without special leave of the Court served a notice to quit on certain tenants of the estate who claimed to hold a *permanent* lease and afterwards instituted a suit to eject them also without special leave of the Court, it was held that the order appointing him did not give him power to serve such notice or to institute such suit without the special leave of the Court, and that as a receiver is not otherwise authorised to institute such suits without special leave of the Court, the suit must be dismissed.(2) In, however, a subsequent case (3) it was pointed out that the former was a suit for the determination of a tenancy of a *permanent* character, and it was held that a receiver appointed under an order in similar terms to the foregoing, had power under that order to sue, to eject without obtaining special permission a *monthly* tenant whose tenancy was determinable by a notice to quit which had been duly served.(4)

In order to avoid the necessity of frequent applications to the Court for liberty to sue it has become customary to give to the receiver in the order by which he is appointed general leave, but as the authority to sue conferred by the order of appointment is confined to such suit as are contemplated by the order,(5) and as doubt may arise whether the particular suit brought is within the term of the authority it is customary, as above stated, to obtain special leave in each case. Proof of the appointment of

(1) *Drobomoyi v. Davis* 14 C. 323, 340, 341.

(2) *Ibid.*

(3) *Hari Doss Kundu v. Macgregor* 18 C. 477.

(4) *Ib.*

(5) *Beach*, §§ 650, 651.



the receiver and of leave to sue is generally given by the production of a certified copy of the respective orders. It seems to be established that the regularity, propriety or necessity of the appointment of a receiver is not to be questioned in a merely collateral action at least by parties or privies to the action in which the appointment was made. As to the rights of other parties in this respect there seems to be a difference of opinion. Probably, however, those who were entire strangers to the original proceeding should be allowed in a collateral action where their interests are affected by the appointment to attack the order on the ground that it was procured through fraud, collusion or deception practised on the Court, but for no other reason.(1) The rule on the Original Side of the Court taken from the practice of the English Court of Chancery is not to compel a party to a suit to give up to the receiver possession of property unless an order of Court to that effect had previously been made upon him.(2)

The general doctrine recognising a receiver as the officer of the Court is not to be understood as limiting or restricting his rights in the management of a suit which he has once undertaken, and after entering upon a litigation he is regarded as being entitled to all the freedom of action of any other suitor, and the fact that he appeals from a decision which is against him is not of itself evidence of bad faith or of mismanagement of his trust and may be a meritorious rather than a censurable act.(3)

Some conflict of authority exists whether, in the absence of special authority, a receiver may sue in his own name or in the name of the original party in whose favour the action accrued. In the first case a distinction must be drawn between the cases where, though the party suing may be a receiver, he has an independent cause of action entitling him to sue and to sue in his own name in which cases he does not really sue in his character of receiver. So a receiver who is holder of a bill of exchange may by the law merchant sue in his own name ;(4) also

(1) Beach, §§ 698, 702.

(2) *Ram Lochun v. Hogg* 10 W. R. 430 (1868).

(3) High, § 207 ; and see as to appeals by a Receiver, Beach, § 716.

(4) *Ex parte Harris*, 2 Ch. D., 423 ; Kerr, 185.



when as bailee he has special property in the goods ;(1) or if he is possessed of chattels and those chattels are unlawfully detained from him. So too after a tenant has attorned to the receiver and so created a tenancy between him and the receiver, the latter may distrain upon the tenant in his own name and on his own authority without leave obtained from the Court ;(2) and there may be other cases in which having an independent cause of action the fact that he is receiver does not disqualify him from suing.(3) In other cases, however, and where the receiver is suing in respect of a cause of action which has accrued to him in his representative capacity from the party whose estate he holds, the prevalent rule appears to be that where the matter is not controlled by Statute or order of Court the receiver should sue not in his own name but in that of the parties whose estate he holds.(4) But this view has been stated(5) to be losing ground and has not always been adhered to either in America(6) or England,(7) and it has been held in the former country that a receiver by virtue of his appointment is a quasi-assignee invested with title to such an extent at least as will enable him to sue in his official character.(8)

(1) *Hills v. Reeves* 31 W. R. (Eng.), 209.

(2) *Kerr*, 232, *et ibi casas* ; *Wilkinson v. Gangadhar* 6 B. L. R. 491 (1871).

(3) In *re Sacker*, 22 K. B. D., 185 ; in *Wilkinson v. Gangadhar* supra. at p. 491, it was said : "It may happen that matters arise out of the receiver's possession which are such as to render it necessary for him to sue personally in regard to them i.e., such as it would be wrong for any of the parties themselves to sue, e.g., where tenants are attorned to him or he has let property in his own name." This was a suit for specific performance of a contract of sale executed by the receiver in his own name and the receiver was admitted as co-plaintiff.

(4) *Beach*, § 688 ; *High*, § 209 ; *Wilkinson v. Gungadhar* 6 B. L. R. 486 (1871) : "Now the application that the receiver should have leave

to sue simply means this, that he should use the names of the owners of the property and come into Court on their behalf whether they consent to his doing so or not" *ib.* at p. 490 ; *Ram Lochun v. Hogg* 10 W. R. 430 (1868). Suit in receiver's own name held to be an error of form only, remediable in appeal, where no objection had been taken *Juggannoth v. Hogg* 12 W. R. 117, (1869).

(5) *Beach*, §§ 688, 689 ; *High*, § 209, 210.

(6) *Beach*, §§ 688, 689 ; *High*, §§ 209, 210.

(7) *Kerr*, 237, *Evelyn v. Lewis* 3 Hare, 472 ; *Armstrong v. Armstrong*, L. R. 12 Eq., 614 ; *Paterson v. Gas Light & Coke Co.* (1896), Ch., 476.

(8) *Beach*, § 689. See (2) at p. 63. The estate does not really vest in the receiver. See p. 7.



When the order appointing the receiver gives him power to sue in his own name or in the names of the parties to the suit, it might well be held that such an order merely entitles the receiver to sue in his own name in cases in which such action is proper and in all other cases to use the names of the parties. It has, however, been decided that the Court has authority to confer on a receiver the power to sue in his own name, and that if the order appointing the receiver gives him liberty he may do so in any case. And a receiver who is authorized to sue though not expressly in his own name may do so by virtue of its appointment with full powers under the Code.(1) When the receiver is permitted to sue in the names of the parties and does so, no action on their part is necessary.(2) A receiver of attached property may also sue. He does not represent the estate for all purposes. He would have none of the powers which may be conferred under O. XL in respect of property belonging to the judgment-debtor not attached in the suit in which order was made.(3) In the last-mentioned case a zemindary was attached in execution of certain decrees against the zemindar, and the plaintiff was appointed receiver with full powers under s. 503 of the last Code to manage the zemindary. Before the appointment of the receiver the zemindar had expended certain sums at the defendant's request to repair a tank for the irrigation of lands held by them in common with him. The suit was brought to recover the sums so expended. It was objected that the receiver could not maintain the suit on the ground that the sum sued for was neither the subject of a suit against the zemindar nor property attached in execution of a decree against him, but it was held that the receiver could maintain the suit. It has been held that where a receiver institutes proceedings

---

(1) *Fink v. Maharaj Bahadur* 25 C. 642 : 2 C. L. J. 469. "It is such a convenience to suitors for the receiver to sue in his own name. Some of the parties may be dead ; and if the receiver is to use the name of the parties he would have to get the suit revived, but if he sues in his own name no such difficulties arise," *ib.* ; *per cur.*, 645, it is often a great saving of time, trouble and expense, *ib.*, 646.

In *Fink v. Buldeo* 26 C. 715 the receiver sued in his own name. The first-mentioned case was followed in *Jagat Tarini v. Naba Gopal* 34 C. 305 : 5 C. L. J. 270, where the subject will be found fully considered.

(2) *Drobomoyi v. Davis* 14 C. 339.

(3) *Sundaram v. Sankara* 9 M. 334, 337.



and is then replaced by another receiver it is necessary that the new receiver should be made a party to those proceedings.(1)

A receiver, being authorized by the Court to bring an ejectment-suit, did so joining as co-plaintiff A who was, in the suit in which the receiver was appointed, adjudged to be the person entitled to the property. On the latter suit being disposed of the receiver was discharged. On the ejectment-suit coming on for hearing *held* that though the joinder of A as a co-plaintiff was not perhaps strictly speaking legal at the time it did not constitute a misjoinder and A had a right to come in under s. 372 of the last Code (now O. XXII, r. 10) and apply that the suit be continued by him. No such application was necessary as A was on the record as a plaintiff and the suit could continue though the discharged receiver's name was still on the record.(2)

The plaintiffs were the receivers of the estate of one G who died leaving two widows K and N. On the 8th August, 1906, one of the co-widows (N) brought a suit for a declaration that she was entitled to a half share in the estate of G and prayed that the properties might be partitioned and her share allotted to her. In this suit the plaintiffs were appointed receivers with all the powers provided under O. XL, r. 1, cl. (d) of the Civil Procedure Code. It was further ordered that the receivers should have power to bring and defend suits in their own name and also should have power to use the names of the plaintiffs and the defendant. The plaintiffs instituted the present suit to recover possession of a certain immovable property and for a declaration that a lease, dated 16th September, 1906, purporting to have been executed by N by virtue of which the defendant claimed to be a permanent tenant was void and inoperative. Subsequent to the institution of the present suit an order was made in the suit in which the plaintiffs were appointed receivers that the plaintiffs as receivers be at liberty to continue the present suit. It appeared that proceedings under the Lunacy Act were instituted in November, 1906, and in those proceedings the District Judge

---

(1) *Akula v. Dhalli* 28 M. 157.

(2) *McLeod v. Kissan* 30 B. 250 :  
6 Bom. L. R. 995.



on the 24th September, 1907, held that *N* was of unsound mind and incapable of managing her affairs :

*Held*, that ordinarily a suit to recover possession of property can only be brought by him in whom there is a present title to it and by his appointment no property becomes vested in a receiver. But this rule like all others is subject to modification by the legislature and the Civil Procedure Code, in O. XL, r. 1, empowers the Court to confer upon a receiver all such powers as to bringing and defending suits as the owner himself has.

That the co-widows of *G* were the present owners of the property and the suit in which the receivers had been appointed comprised that property. The receivers, therefore, were as competent to bring the present suit as the owners would have been.

That the omission of the plaintiffs to get leave, in the suit in which they were appointed receivers, to institute the present suit may have consequences adverse to them in that suit, but it cannot affect their powers to bring the present suit.

That the Lunacy Act contemplates only the question of lunacy or sanity at the time of the enquiry ; there is no provision in it that the enquiry shall extend to the ascertainment of the period at which the alleged lunatic first became of unsound mind and the finding of the District Judge in the Lunacy proceedings did not carry things back further than the enquiry which commenced in November, 1906, and notwithstanding the result of that enquiry, the burden still rested on the plaintiffs of showing that *N* was of unsound mind on the 16th September, 1906—the date of the execution of the lease.

That *N* being of unsound mind at the time of the execution of the lease, it created no title in the defendant which barred the plaintiff's right to possession.

That even if lunacy at the date of the execution of the lease was not established, the transaction could not stand, as it did not appear that the lease was explained to *N*, a *Purdanashin* lady of weak intellect, and was understood by her.

*Held* (as to the contention that apart from lunacy the transaction would be voidable and not void and could not be avoided by



any one but *N* and in a suit to which her manager was party)—that the receivers were competent plaintiffs even if the lease was not void but voidable.

That even if a lunatic's manager can sue, still there is no established rule of practice in the Calcutta High Court that requires suits relating to the lunatic's property to be brought by him and not by the lunatic. On the contrary, the Code of Civil Procedure contemplates suits by persons of unsound mind whether so adjudged or not. It is true that a person so incapacitated has to sue by a next friend ; but a next friend is not a party and the absence of a next friend in the present suit was immaterial.

That, in any case, as the objection did not affect the merits of the decision of the Lower Court, under s. 99 of the Code of Civil Procedure, it was not a ground for reversal of that decision.(1)

The necessity for permission extends not merely to suits brought by, but also to suits defended by, the receiver. Whether a receiver shall be permitted to defend an action already pending against his principal is wholly discretionary with the Court.(2) It is not proper for a receiver to defend actions brought against him without the sanction of the Court, and if he does so and is unsuccessful he may be disallowed his costs of action. But if he defends an action brought against him successfully without putting the estate to the expense of an application to the Court which he might have made for his own benefit, he has the same right to be indemnified as if he had applied to the Court.(3) In a case where ejectment was brought against a receiver, although without leave, the Court decided an enquiry whether it would be for the benefit of the parties interested, who were adults, that the receiver should defend the ejectment and charge the expenses in his accounts.(4)

Persons interested in the estate of a testator, not being the legal personal representatives of the testator, will not be allowed to sue persons possessed of assets belonging to the testator, unless it is satisfactorily made out that there exist assets which might be

(1) *Haji Cassim v. K. B. Dutt* 19 C. W. N. 45 : 27 I. C. 459.  
(2) *Beach*, § 708.

(3) *Kerr*, 258.  
(4) *Anon.*, 6 Ves. 287.



recovered, and which, but for such suit, would probably be lost to the estate. Such a suit may be supported where the relations between the legal personal representative and the debtor to the estate present a substantial impediment to the prosecution by the legal personal representative of a suit against the debtor to recover the assets of the testator, and where there is a strong probability of the loss of such assets unless such a suit be allowed. But where there is an administration-suit already pending, the proper course to pursue is to obtain an order in the administration-suit, directing either a suit to be brought in the name of the legal personal representative, or appointing a receiver to sue ; and in this country the Courts might have the power to direct such receiver to sue in this own name.(1) A party to a cause does not by being appointed receiver thereby lose his privilege as a party to the cause and may apply to the Court as if he did not hold the office.(2)

The usual rule as regards applications in respect of the estate is that they should be made by the persons beneficially entitled and not by the receiver. The latter ought not to present a petition or originate any proceedings in the cause, but should, if application to the Court become necessary, apply to the party conducting the proceedings or probably to any other party in the suit at whose instance he may have been appointed to make the necessary application. If after he has done so no application be made and no proper means be taken to relieve the receiver from his difficulty he may apply himself, and will be entitled to his costs.(3) It is, however, to be observed that both in England(4) and in this country receivers have originated proceedings in their own names without any observation having been made as to the impropriety of such a course. In fact according to the author's experience, the one course has been followed as frequently as the other in applications made to the Calcutta High Court.

Applications  
in respect of  
estate.

(1) *Oriental Bank v. Gobind* 10 C. 713.

(2) *Crisp v. Platel* 2 Ph. 299.

(3) *Kerr*, 237 ; *Wilkinson v.*

*Gungadhar* 6 B. L. R. 487, 488 (1871) ; *Beach*, § 258.

(4) *Kerr*, *ib.*



A receiver is entitled to be indemnified out of his estate in respect of all costs, charges and expenses properly incurred by him in the discharge of his office or under the order of the Court. The compensation of a receiver is a charge upon the funds which may come into his hands.(1) Upon the question whether receivers are personally liable for debts incurred by them in the discharge of their duties, where they order goods for the purposes of the estate, the inference *prima facie* is that they pledge their personal credit looking for indemnity to the estate assets, and this inference will not be rebutted by the fact that they sign orders as 'receivers and managers.'(2) They are entitled to this indemnity even in priority to the claims of persons who have advanced money under an order making the repayments of such advance a first charge on all the assets(3) and to the costs of the action.(4) When a receiver and manager appointed by the Court properly incurs debts in carrying on the business, the Court will see that such debts are satisfied either by the receiver, or if the receiver becomes bankrupt or there is any other reason which makes it advisable, by payment direct to the creditors of the business, instead of to the trustee in bankruptcy, out of the funds in Court available for that purpose. Where a receiver appointed in a debenture-holder's action in carrying on the business of the company, incurred considerable debts without the leave of the Court, or the consent of the debenture-holders and subsequently became bankrupt, and the funds in Court were the only assets of the Company and were insufficient to discharge the plaintiff's costs of realization and the receiver's costs of carrying on the business, although the plaintiff's contended that the receiver having acted improperly was not entitled to be indemnified out of the assets and that the funds less costs of realization ought to be paid to the debenture-holders : *Held*, that the funds in Court must be applied, *first*, in payment of the costs of realization, *secondly*, in payment of the receiver's costs.(5)

(1) Beach, § 771; Kerr. 278, 312. *Guru v. Velu* 1952 T. C. 64.

(2) *Burt v. Bull* [1895], 1 Q. B. 276; *Ex parte Izard*, 23 Ch. D., 75, 79; see *Re Brooke* [1894] 2 Ch. 600.

(3) *Strapp v. Bull* [1895], 2 Ch. 1.

(4) *Batten v. Wedgwood Co.*, 28 Ch. D., 317; and see *Morrison v. Morrison*, 7 D. M. & G. 215.

(5) *In re London United Breweries, Ltd.*, [1907], 2 Ch. 511.



It is not necessary for a creditor to resort to the doctrine of his right to the benefit of a receiver's indemnity as a foundation for the right to sue the estate for a debt incurred by the receiver. He is entitled to proceed against the representative of an estate for recovery of debt incurred by the receiver during his management of the estate ; the right to maintain such suit is founded on the just and equitable principle that as the acts of a receiver, acting within his authority, are the acts of the Court, the estate cannot be permitted to enjoy the benefit of those acts without being held responsible for the obligations arising out of them ; and in this respect a receiver occupies a position towards an estate in his hands different from that of an executor or trustee.(1)

Where the Court gives a receiver authority to advance money for the benefit of the estate of which he is the receiver, it generally allows him interest at 5 per cent. on the sum which it authorises him to advance and gives him a charge on the assets for that sum and interest. If a receiver advances money without such previous authority he is only entitled to an indemnity out of the assets.(2) In a case where a receiver has paid sums out of his own pocket in satisfaction of legacies he will be reimbursed.(3) A receiver may be entitled to allowances beyond his salary for any extraordinary trouble or expense he may have been put to in the performance of his duties or in bringing actions, or defending legal proceedings which have been brought against him, and is entitled to an indemnity in respect of such moneys.(4) So where an adverse application had been made against a receiver by a party to the cause, which was refused with costs, the applicant being wholly unable to pay those costs, it was held that the receiver was entitled to be indemnified and have his costs as between attorney and client out of the fund in hand.(5) So also where a receiver defended an action and the defence was completely successful the extra expenses were allowed, although the receiver has acted without the leave of the Court.(6) When the Court has taken possession of

(1) *Mohari v. Shyama* 30 C. 937, 943, 944 : 7 C. W. N. 799.

(2) *Ex parte Izard*, 23 Ch. D., 80.

(3) *Palam v. Wright* 10 Beav. 236.

(4) *Kerr*, 314, 315.

(5) *Courand v. Hanmar* 9 Beav. 3 ; even though as in this case it belonged to incumbrancers.

(6) *Bristowe v. Needham* 2 Ph., 190 ; and see generally *Kerr*, 213.



an estate by a manager or consignee it will, as against all parties for whose benefit the possession has been held, refuse to permit its officers to be discharged until the amount due to them has been paid.(1)

Where in a debenture-holder's action a receiver was authorised to borrow £3,000 for the general purposes of the business, the sum to be a first charge on the assets, but without any further application for leave to raise money, incurred debts beyond the £3,000 ; *held* that the order so authorising him had not deprived him of his right to be indemnified out of the assets ; that if without any application to the Court he had incurred further liabilities he would only be entitled to be indemnified in respect of them so far as he could show that having regard to all the circumstances he was justified in incurring them without leave ; that this must be separately determined in each particular case ; and that it would not be enough for him to show that the further liabilities had been incurred *bona fide* and in the ordinary course of business.

In this case after enquiries in chambers the following questions came before the Court :—whether the receiver was entitled to be indemnified (*a*) in respect of bodies supplied for motorcars which had been ordered by customers either before or after his appointment ; (*b*) bodies supplied to him for cars which had been prepared for a motor show ; (*c*) rent of business premises ; and (*d*) the amount overdrawn at the bank :—*Held* that inasmuch as the receiver had reasonable ground for believing that he would be able to discharge the liabilities out of the purchase-money of the cars, and it would not have been practicable to apply to the Court, he ought to be indemnified in respect of (*a*) and (*c*), that the motor bodies supplied for the show were ordered as a speculation, so there should be no indemnity in respect of (*b*) ; that, although the overdraft had all been spent on payments which were necessarily made to keep the business going, there was no reason why the receiver should not have applied to the Court for leave to make those payments and he was therefore not entitled to an indemnity in respect of (*d*). (2)

(1) *Moran v. Mittu Bibi* 2 Ch. 69.

(2) *In re British Power Traction*

& *Lighting Co. Ltd.* (1906), 1 Ch., 497, 506 ; (1907), 1 Ch. 528.



Though a receiver while acting in the discharge of his duty is entitled to be indemnified against all loss, including the costs of actions brought against him as receiver, still the guiding principle laid down by *Walters v. Woodbridge* (1878), 7 Ch. D., 504, is that the defence to the action was for the benefit of the trust-estate. So where an action has been brought against a receiver and administrator *pendente lite* charging him with personal fraud and misconduct while acting as administrator and receiver, but otherwise not affecting the estate and having no relation to it except so far as the acts complained of were acts done by him while acting as an officer of the Court : *held* that the receiver was not entitled to be indemnified against the costs incurred in successfully defending the action.(1)

The Court may grant to the receiver such fee or commission on the rents and profits of the property by way of remuneration as the Court thinks fit.(2) The receiver's allowance is either a percentage upon his receipts, or a gross sum by way of salary. In all cases in which it shall be referred to the Master to enquire and report who is a fit and proper person to be the receiver(3) of any estate and property the Master shall also enquire and report what will be a proper commission or salary to be allowed.(4) The amount which will be allowed is what is reasonable having regard to the difficulties or facilities of collection and management and the other circumstances of the estate. When a commission is allowed it is generally at the rate of 5 per cent., though the rate in the case of a very large estate has by arrangement with the receiver been fixed as low as one per cent. on the value of the estate coming into his hands provided that the remuneration was not less than a particular sum.(5) He is entitled to commission on collections made through his manager.(6)

(1) In re *Dunn*, *Brinklow v. Singleton* [1904], 1 Ch., 648, 655.

(2) O. XL, r. 2. *Rebati v. Uma* 1953 C. 574 : 58 C. W. N. 193 (either percentage or fixed rate).

(3) No person shall be ineligible for the office of receiver merely because he is an officer of the High Court, Act XXVIII of 1866, s. 12.

(4) Rule 19. (Original Side).

(5) In re *Luchminarain*, Cal. H. C. 26th March, 1901 : it was further

ordered that the receiver was at liberty to charge to the estate the cost of such personal establishment as he might consider necessary and that he be at liberty to appoint such person or persons as his agent or agents at Rangoon, Mandalay and Churu, as he might consider necessary and proper for the efficient management of the estate.

(6) *Satya v. Subodh* 1953 C. 672.



A receiver may be appointed with his consent to act without salary. If a trustee or party interested ask leave to propose himself as receiver, he will be usually required to act without salary, unless by consent.(1)

A receiver is entitled to his costs, charges and expenses properly incurred in the discharge of his duties.(2) The question whether these include the assistance of a *Karkun* depends (if the terms of the order appointing him are silent upon the subject) upon the nature of the estate and must be determined in each case with reference to its own circumstances. No general rule can be laid down ; but whether he be allowed a *Karkun* or not, the receiver must himself perform the proper duties appertaining to his office. These he cannot delegate.(3)

A receiver may be entitled to allowances beyond his salary for any extraordinary trouble or expense he may have been put to in the performance of his duties. But if any extraordinary expenses have been incurred by the receiver, allowances for them will not be in general sanctioned unless they have been incurred with the approbation of the Court or unless the estate has been benefited thereby.(4) Even where the receiver has consented to act without a salary he will be entitled to be paid for services which have proved beneficial to the estate, and which it was no part of his duty as receiver and manager to perform, e.g., working in the business as a mechanic.(5) He is to be paid out of the estate.(5a) The payment is not dependent on the sufficiency of the estate to bear all the costs. He is entitled to be paid without regard to the sufficiency of the estate to meet the claims upon it.

The receiver is entitled to be paid next after the costs of realizing the estate. He is the officer of the Court, and the Court is bound to see that he is paid.(6) The Court may vary his salary according to circumstances.(7) Order as to remuneration is not appealable.(8)

(1) Kerr, 309 *et seq.* 317 ; but there is no inflexible rule as regards trustees. *Re Bignell* (1892), 1 Ch., 59. *Md. v. Md.* 1948 M. 335 :

(2) *Balaji v. Ramchandra* 19 B. 660, 662 ; or in extraordinary services which have been sanctioned by the Court. Kerr, 314, 317 ; 1955 Andhra 274.

(3) *Balaji v. Ramchandra* *supra*.

(4) Kerr, 314.

(5) *Harris v. Sleep* (1897), 2 Ch., 80.

(5a) *Girdharan v. Majid* 1953 P. 264 ; *Rebati v. Uma* 1953 C. 574.

(6) *Batten v. Wedgwood Coal and Iron Co.* 28 Ch. D., 317, 323, 324.

(7) *Rebati v. Uma* 1953 C. 574.

(8) *Ibid* ; (1960) 2 An. W. R. 194 ; 1953 P. 264. *Contra*, 1942 N. 64 (not good law).



A promise to pay the salary of a receiver without leave from the Court, even if unconditional, being in contravention of the law is not binding on the promisor. A receiver being an officer of the Court, the Court only is to determine his fees for remuneration and the parties cannot by any act of theirs add to, or derogate from, the functions of the Court without its authority.(1)

A receiver, though discharged, has a lien on the estate for his claims and allowances,(2) as the lien belongs to the Court. An unpaid creditor of the receiver is entitled to be subrogated to him.(2a)

(m) Lien.

In *Bertrand v. Davies*(3) the Master of the Rolls summarized the results of the cases as to the receiver's or manager's lien thus :—

“The three following propositions may, I think, be decided from the above-mentioned cases.

“In the first place, that a lien on the estate exists for the costs of management where the management has been conducted by a person authorised to do so by the owner of the property.

“In the second place, that though there be no express appointment of the manager, yet, if the persons interested in the estate know that he is performing the duties and do not interfere, then they must be presumed to have acquiesced in his continuance in that office, and they cannot dispute his claim to a lien on the estate for the expenditure which by their tacit acquiescence they have encouraged him to make.

“In the third place, where a receiver or manager is appointed by the Court, in a suit properly constituted such manager is to be considered as appointed on behalf of all persons interested in the property, and he is entitled to his ordinary commission and allowance, and also to a lien on the estate as against all persons interested in it for the balance, whatever it may be, that shall be found to be due to him on taking his accounts.”(4)

(1) *Prokash v. Adlam* 30 C. 696 (a gross contempt).

(2) *Prem Lall v. Sumbhoo* 22 C. 960, 973; *Kerr*, 293. 1954 C. 386.

(2a) 1952 T-C. 64.

(3) 31 Beav., 429, 435, 436, cited in *Moran v. Mittu Bibee* 2 C. 70 and *Prem Lall v. Sumbhoo* supra.

(4) See also *Fraser v. Burgess* 13 Moo. P. C. 314, 346; *Batten v. Wedgwood Coal & Iron Co.* 28 Ch. D., 317, 324. As to priority of Receivers' charges, see *Rajagopala v. Jamal* 90 I. C. 337: 1925 M. 571.



The Court will not compel a receiver, who has been discharged to make over the property in his possession until his lien has been satisfied or provided for by a sufficient indemnity.(1)

In the undermentioned case the attorneys for the plaintiff claimed a lien on the amount in the hands of the receiver of the Court to the credit of the plaintiff in a partition-suit for the costs of the suit which had been secured by the deposit with the attorneys of the title-deed of the plaintiff's family dwelling-house which formed a portion of the property sold by the receiver under the decree in the suit. *Held*, in an application by the attorneys for payment to them of such costs, that the lien could not be given effect to in summary proceedings of this nature, but should form the subject of a regular suit. Except in such a suit it is not the practice of the Court to make any order for payment of costs between an attorney and his client.(2)

**Duties and liabilities of receiver.** § 29. A receiver duly appointed is strictly amenable for the proper discharge of the trust confided to him.(3) See 0.40, R. 3, C. P. Code.

**(a) Amenability to Court.** A receiver is only amenable for his acts and accountable to the Court which appoints him.(4)

His amenability to the Court appointing him arises from his being its officer and consequently continues until he is finally discharged by the act of the Court. So it has been held that a compromise and dismissal of the suit does not discharge his accountability to the Court. Only the Court which appointed him can divest him of the trust which is imposed on him. Out of this rule as to the receiver's amenability to the Court which appointed him has grown the practice, to which reference has been already made, of requiring all persons desiring to enforce claims against the receiver first to obtain the leave of the Court.(5)

**(b) Duty of obedience.** A receiver's first duty is to obey the orders of the Court appointing him. If he does not, he may be deprived of his office by proceedings of contempt for disobedience.(6)

(1) *Prem Lal v. Sumbhoo* 22 C. 960, 973.

(2) *Zohur v. Noor* 21 C. 85.

(3) *Beach*, § 293.

(4) *Buddinath v. Bycaunt* 2 Tayl. & Bell, 192, 193, 1959 P. 323 (separate

suit is wrong).

(5) *Beach* § 293. 1956 A. 665, 1956 P. 429 (court may direct regular suit).

(6) *Behari v. Shankar* 1925 L. 309 ; *Jayanti v. Waman* 1932 B. 638.



A receiver should follow the line of duty marked out by the decree or order, and if loss results from a departure therefrom, he will be required to bear it. The fact that the departure is made under the advice of counsel will relieve him from the imputation of *mala fides*, but not from liability.(1) Where the order appointing him is silent upon a particular point, or is not clear, it is both his right and duty to apply to the Court for necessary instructions.(2)

A receiver is not liable for acts done under an order of Court. So it has been held that no action can be maintained against a receiver for rents collected in pursuance of the order by which he was appointed notwithstanding the fact that the order was afterwards reversed on appeal. In the same way after a receiver has complied with an order to distribute the funds of an estate among the creditors who proved their claims he will be protected against the actions of other creditors for their claims or demands.(3)

(c) No liability in respect of acts done under order.

A receiver should be entirely impartial. He is not appointed for the benefit merely of the party on whose application the appointment is made, but equally for the benefit of all persons who may establish rights in the case. He must not collude with any one or prefer one set of interests to another.(4) The receiver ought not to interfere in any litigation between the parties. If he does so, he will not be allowed the costs of a motion for such a purpose. It is the duty of a receiver to receive the rents and collect the moneys without raising any controverted question between the parties.(5)

(d) Impartiality.

Many of the receiver's duties have been alluded to in dealing with his rights and powers. So his right to take possession implies also a duty to do so. And when he has done so, he should keep control over the property which he has reduced into possession. If he puts the property out of his control so that other persons are able to deal with it, he guarantees the solvency of these persons and becomes answerable for any loss which may ensue.(6) It is his duty to preserve and

(e) Duties generally.

(1) Beach, § 291.

(2) *v. ante*.

(3) *Holcombe v. Johnson*, 27 Minn., 353 (Amer.): *Keene v.*

*Gaehle*, 56 Ind., 343 (Amer.), cited in Beach, § 304.

(4) Beach, § 296.

(5) *Comyn v. Smith* 1 Hog., 81.

(6) *v. ante*.



protect the property in his possession to the best of his ability.(1) A receiver, however, is not expected any more than a trustee or executor to take more care of the property entrusted to him than he would of his own.(2) So if he deposits the moneys for safe custody with a banker in good credit to be placed to his account in the character of receiver he will not be answerable for the failure of the banker.(3) When a notice under s. 408 of the Calcutta Municipal Act (now s. 343) has been served on the actual owner of an estate in the hands of a receiver appointed by the High Court, he is liable under the section as such, and not the receiver, to carry out the requisitions made therein. It is incumbent on the owner in such a case to request the receiver to comply with the notice, after taking the directions of the Court, and on the latter's failure to do so he should himself apply to the High Court making the receiver a party. If the Court refuses the application, the owner would be enabled to satisfy the Magistrate that he had used all diligence to carry out the requisitions, and in the event of a conviction, the penalty would be merely nominal. If the owner is helpless in the matter the General Committee may proceed under the section against the occupiers. A receiver appointed by the High Court is not the "owner" of the premises he holds as such, nor is he an "agent or trustee" within the definition of the term in s. 3(32) of the Calcutta Municipal Act.(4)

(f) Liability to the estate from his wilful default or gross negligence.(5) So if he places the moneys received by him in what he knows to be improper hands he will have to answer the loss out of his own pocket.(6) As regards mistake it was said by Lord Cottenham respecting a receiver : "If one even innocently pays money to other persons whom he supposes to be entitled in right of the parties in a cause, but who prove not to be so entitled, he will be responsible to such parties, inasmuch as in making such payments he departs from the strict line of his duty

(1) Beach, § 298.

(2) Kerr, 272.

(3) *Knight v. Lord Plymouth* 3 Atk., 480, otherwise if he mixes the moneys with his own. *Wren v. Kirton*, 11 Ves., 381; High, § 274.

(4) Now s. 3 (50). *Corporation v. Haji Kassim* 38 C. 714 : 15

C. W. N. 1002. As to appropriation of funds by owner-receiver, see *Nag Koer v. Sham* 23 A. L. J. 1045 : 1925 P. C. 257 : 92 I. C. 274.

(5) Civ. Pr. Code, O. XL.; Kerr, 276.

(6) *Knight v. Lord Plymouth* supra.



and is therefore liable for any error he may commit.”(1) The receiver is responsible for all properties which came into his custody or management, and he is responsible not only for actual moneys received by him, but for those which might have been received by him but for his wilful neglect or default.(2)

In a case where a receiver had paid moneys to the plaintiff's solicitor, with directions to pay them into Court which had not been done, the receiver was held liable for the loss, there being no sufficient evidence to show that the receiver had authority from the plaintiff to pay the moneys to the solicitor.(3) And where a receiver who has been appointed by way of equitable execution pays the solicitor instead of the judgment-debtor, he is liable if the money never comes to the creditor's hands.(4) It being well settled that the receiver is the officer of the Court who holds possession of the property in controversy for the benefit of all parties interested and not for the plaintiff at whose instance he was appointed, it follows that the plaintiff should not be held responsible for losses which result from his wrongful acts or negligence there being no participation therein or fraud on the part of the plaintiff. The responsibility for such losses rests upon the receiver and his sureties.(5) The immediate and direct responsibility of the receiver to the Court does not, however, relieve him from liabilities which he may incur towards third parties, and these liabilities are generally recognised and enforced by the same Court which has appointed him. And when a party to the cause who is interested in the funds in the receiver's hands ascertains that the receiver has made improper payments or has misapplied the funds, or any portion of them, he may apply to the Court for relief at any stage of the cause, and it is not necessary that he should wait until the receiver passes his accounts and then have the improper payments disallowed.(6) The extent of a receiver's liability for the miscarriage or fault of another is dependent in a large

(1) *McCan v. O'Ferall* West, H. L. 593, 616, cited in Beach, § 302.

(2) *Sattya v. Golapmonee* 5 C. W. N. 223 ; *Subal v. Jatindra* 53 C. 881 : 1927 C. 175 : 99 I. C. 761 : *Rahimuddin v. Fasiuddin* 9 Dac. L. R. 23.

(3) *Delfosse v. Crawshay*, 4 L. J. Ch. N. S., 32.

(4) *Inde Coope & Co. v. Kidd* 63 L. J. Q. B. 726.

(5) Beach, § 303.

(6) *De Winton v. Mayor of Brecon*, 28 Beav. 200 ; High § 269.



degree upon whether the loss occurred through the receiver's own negligence or default. In cases of loss occurring by reason of his own negligence or misfeasance the receiver will be held liable. Where, however, he has acted with due caution and for what he deemed the best interests of the estate and a loss occurs without fault of his own, he will not ordinarily be required to make good such loss.(1) So where a receiver collected a large sum of money due to the estate and deeming it unsafe to send the amount *in specie*, he purchased bills of exchange of a tradesman then in good credit, but who soon afterwards failed, the receiver having had no knowledge of his failing circumstances, it was held that he was not personally liable for the loss.(2) So also when a loss occurs through the fraud or misconduct of an attorney, as by his misappropriation of funds collected for the receiver, if the latter used due and reasonable care in selecting such attorney, he will not be charged with the loss.(3) A receiver may be ordered personally to pay costs incurred by reason of his misconduct or neglect in the discharge of the duties.(4) A person who, having assumed to himself improperly the character, neglects the duties of a receiver whilst the parties interested consider him to be acting as receiver, makes himself responsible for any of the property which is lost through his neglect.(5) The liability of a receiver to the Court appointing him does not terminate until his discharge.(6)

It has been held in America that if the receiver in the course of his duty enters into a covenant or executes an instrument by virtue of his office as receiver, he cannot be held personally liable upon it, and the remedy upon such covenant must be sought against the estate of which he is receiver.(7)

In all applications for payment of money by a receiver the latter ought to appear and give information to the Court about funds in his hands and whether there are any attachments or claims on the same.(8)

(1) High, § 275.

(2) *Knight v. Lord Plymouth*, 3, Atk. 480, *supra*.

(3) *Powers v. Longbridge*, 38 N. J. Eq., 396 (Amer.), cited in High, § 275; Beach, § 318.

(4) Kerr, 276.

(5) *Wood v. Wood* 4 Russ. 558; *Wickens v. Townsend*, 1 R. & M. 361.

(6) High, § 278.

(7) High, § 272; Beach, § 318; but see *ante*.

(8) *Chaitan v. Gocool* 1 C. W. N. 303.



The Code provides that every receiver shall pass his accounts at such periods and in such form as the Court directs and pay the balance due from him thereon as the Court directs.<sup>(1)</sup> It is not sufficient for the receiver merely to show that he paid certain sums on a particular account. He is bound to furnish details of such expenditure.<sup>(2)</sup> The old Rules and Orders prescribed that the Court Receiver is to account half-yearly and to pay balances into Court, and the Master is required to report any default of the officer in these respects.<sup>(3)</sup> Other receivers are required to pass their accounts on oath once in every year, but instead of the annual periods longer or shorter periods may be fixed at the Master's direction. The days upon which the balances are to be paid into Court are fixed, and if there be default on the part of the receiver the latter's commission or salary may be disallowed, and the receiver charged interest at 6 per cent. upon the balances neglected to be paid by him during the time the same shall appear to have remained in his hands, and the Master is required to report on the first day of the second and fourth terms in each year which of the receivers have not duly passed their accounts or paid in their balances.<sup>(4)</sup> A receiver should personally or by a subordinate keep correct and accurate accounts of the receipts from and expenditure upon the estate, obtaining vouchers for all, other than petty, sums paid.<sup>(5)</sup> O. XL, r. 3, however, does not mean that the alleged payment should simply be supported by vouchers. The Court must see that the payments are properly made. The Court must see that the expenditure is beneficial to the parties interested.<sup>(6)</sup> It is of great importance that a receiver should file his accounts with regularity and promptitude.<sup>(7)</sup>

(i) Liability to account.

(1) O. XL, r. 3 (b) and (c).  
(2) *Barada v. Rashmani* 20 C. L. J. 113 : 28 I. C. 25.  
(3) Rules and Orders, 19.  
(4) *Ib.*, 20 ; see *Kerr*, 321 *et seq.* ; although a receiver is only bound to pass his accounts at the periods appointed, he may at any time apply to the Court to pay in moneys in his hands : *Kerr*, 223. It is no excuse to say that the circumstances of the estate made it necessary to keep large sums in hand where there has been a

direction to pay in : *Hicks v. Hicks*, 3 Atk., 274 ; as to the consequences of default and putting recognisance in suit against sureties, see *Kerr*, 224, 230.

(5) *Balaji v. Ram* 19 B. 660, 662 ; *Teller v. Golam* 40 C. L. J. 28.

(6) *Mohini v. Baroda* 14 C. L. J. 445 : 12 I. C. 780.

(7) *Gonesh v. Troylucko* : *Re C. T. Davis*, Suit 294 of 1881, Cal. H. C. O. O. C. J. Cor. *Trevelyan*, J., 23 March, 1887.



The procedure upon rendering and passing accounts in the High Court is as follows :—

When the receiver's half-yearly account is ready and signed he gives notice to the parties that the account is ready and that they may inspect before filing. A date is mentioned in the notice as the date of filing.

Upon the account being filed in Court with vouchers in support of the amount, one of the Assistant Registrars goes through the account, and if it is found in order it is set down before a Judge in Chambers for the purpose of being passed. If any party objects to the account or any part of it he files his objections and the objections are brought on and disposed of at the time fixed for passing of the account.

A receiver improperly putting forward a claim for a larger amount than is legitimately due to him is liable, when his accounts are adjusted, for interest upon the excess deposited. A applied for the discharge of the receiver appointed to his estate. The Court directed that the estate would be released from the custody of the receiver as soon as his dues were brought into Court. A endeavoured to raise money with a view to make a deposit. While negotiations were in progress, the receiver wrote a letter to the person who was about to advance the money with a view to dissuade him from the transaction. A ultimately raised money on a high rate of interest and the deposit was made : *Held*—that an enquiry as to the raising of loan at a high rate of interest due to the intervention of the receiver was foreign to the matter relating to the rendering of accounts by the receiver, and if A had been damnified by reason of his improper conduct, a separate suit should be instituted for the determination of the rights and liabilities of the parties.(1)

A succeeding receiver cannot sue a former receiver to recover funds which the latter should have realised and accounted for.(2)

(1) *Barada v. Rashmani* 20 C. L. J. 113 : 28 I. C. 25.

(2) *K. B. Dutt v. Shamal* 41 C. 92 ; 24 I. C. 768.



The question of exceptions to the receiver's accounts and the liability of receivers was fully discussed in the case undermentioned(1) in which the Court (Sale, J.) said :—

Sattya  
Sankar v.  
Golapmonee.

“The question now is whether these exceptions disclose any real or just ground for refusing to pass the accounts which the receivers have filed. I propose to deal with the exceptions to the accounts filed by both receivers at one and the same time, as what I have to say will apply to both sets of exceptions equally.”

“There is first a general ground of exception taken to these accounts, and that is that they do not cover the whole extent of the liability or accountability of the receivers, inasmuch as they do not include the mofussil accounts of the estate. It seems to me this is not, strictly speaking, a matter of exception to the accounts filed. The only question which properly arises on an application by a receiver to pass his accounts is as to the items of that particular account and involves the enquiry whether all his collections, made on behalf of the property of which he is the receiver, are duly entered in the accounts, and next, whether all his disbursements are payments properly made in respect of the estate of which he is the receiver. These are the only matters which can be conveniently dealt with on an application to pass accounts. But it by no means follows that a receiver's liability is to be restricted to matters shown upon his accounts. If there is any liability attaching to the receiver other than that which appears on the face of the accounts, the proper course is to sue the receiver for the purpose of establishing that liability. It is impossible on an application to pass a receiver's accounts to go into serious questions with regard to his liability and responsibility, which are really not dependent upon the accounts filed by him, but arise independently of his accounts. Questions of this sort can only be satisfactorily dealt with by suit. There is, moreover, but little doubt as regards the question what the liability of a receiver really is. That liability is defined in s. 503, Civil Procedure Code, and is also explained by Farran, J., in *Balaji Narain Pavardhan v. Ram*

(1) *Sattya v. Golapmonee* 5 C. W. N. 223. See also 53 C. 881 dis-

tinguished in 47 C. W. N. 400, 40 C. W. N. 479, 1953 B. 105.



*Chandra Govind Kanade.*(1) The receiver is responsible for all properties which came into his custody or management, and he is responsible not only for actual sums received by him, but for those which might have been received by him but for his wilful neglect and default. It is unusual and improper to raise questions with regard to the soundness or prudence of the system of management adopted by a receiver, or to seek to charge him for wilful default or negligence on an application by him to pass his accounts. These are not matters which can be disposed of in the shape of exceptions to accounts. Applying these tests to the several exceptions which have been filed to the accounts submitted by receivers, it appears that not a single one of these exceptions can be supported as a proper exception to these accounts. In not one of them is the objection taken that the receiver has received any sum which he has not properly credited, nor is there a single exception which charges that any payment or disbursement appearing in the accounts either has not been made by him as a fact, or, if made, was not made for the purposes of the estate. If any such questions had been raised by the exceptions, and it appeared there was substance in the dispute, it might have been necessary to refer such dispute or disputes for enquiry. But after a long hearing and careful examination of the matters raised by these exceptions, all I need say is that there does not appear to be one which has either been established or which would justify a reference for further enquiry. In substance the exceptions consist of objections more or less specific to the mode of management adopted by the receivers. Certain of them allege misconduct of the receivers in respect of the estate property as regards alleged improper compromises of claims or suits. Another class of exceptions complain that receivers have sanctioned methods on the part of the *naibs* or other employees of the estate which are not justifiable. It is said also that instalment bonds have been improperly taken by the *naibs* for a consideration with the object of giving time to the debtors to pay their debts, and also that *nuzzurs* have been received by various employees of the estate and have not been credited. It is suggested in respect of all these matters that the management by the receivers has been

---

(1) 19 B. 660 (1894).



at fault and has caused loss to the estate. I do not understand it to be suggested that the receiver is personally responsible in respect of bribes which the employees of the estate have received. But I am asked that an enquiry should be directed on these allegations for the purpose of establishing the fact that the management by the receivers has not been beneficial to the estate. All I need say is that there is nothing in the evidence to show that the receivers are in any sense personally responsible for the malpractices of the servants of the estate which are complained of, and even if a *prima facie* case of responsibility on the part of the receivers had been made out, it seems to me that an enquiry of this sort would be foreign to the purposes and scope of the present application."

"I think, therefore, all these exceptions must be disallowed, but I should like to make some observations upon a matter which rises only incidentally upon these exceptions, but has been made the subject of considerable argument, and that is the objection to the effect that the accounts filed by the receivers are improperly confined to sums that have come into their own hands and their dealings therewith."

"It is urged that in these accounts of the receivers there is no account included of the mofussil collections made by the employees of the estate, and it is contended that a receiver's accountability extends to all these collections whether they came to the receivers' hands or not. My difficulty in respect of this argument is that I do not see how a question of that sort can be determined upon an application to pass accounts. It might have been necessary to adopt one or other of the following courses: to postpone the passing of these accounts until the question of the receivers' liability has been established by suit, or to pass the accounts reserving the right of the parties to establish any claim they may make against the receivers in a suit properly framed for the purpose."

"I do not think it necessary to take either of these courses. No suit has been instituted in respect of this matter, although the parties have had months to consider what they are pleased to call their discoveries and in the next place, before I can take either of these courses, I must see if any real *prima facie* ground of accountability was made out against the receivers in



respect of this matter. It seems to me that the evidence now adduced entirely contradicts the alleged accountability. It is quite clear that the receivers from the first disclaimed all responsibility in respect of sums other than those directly remitted to them from the mofussil. That position was taken by the receivers from the very first, and there can be no stronger evidence of this fact than this, that from 1878, twenty-two years ago, accounts of the receivers filed in this Court have been confined to sums actually received by them, and this has been done with the approval and sanction of the parties and of the Court."

"The receivers have not included in their accounts the mofussil collections by the servants of the estate, and for this very good reason that the parties objected to the receivers having any control over the mofussil collections. From time to time one receiver after another has pointed out the difficulty which arises in respect of the management of the estate by reason of all mofussil collections not being permitted to come to their hands, and on one occasion an application was made on the part of the then receiver that he ought to be allowed out of some large funds then available to form a reserve fund for paying Government revenue, and it was pointed out that if that was done it would enable the receiver to undertake the responsibility of paying Government revenue and of making all mofussil collections. But as usual, in the history of this suit, when any course has been suggested by the receiver for the benefit of the parties, it is strongly objected to by them. They preferred the old system that the receiver should have no control over the *naibs*, that the *naibs* should make all local collections and disbursements including the payment of Government revenue, and how, on the face of this, the present applicant and his supporters can urge that the receiver is responsible for the acts of the *naibs* I fail to understand. The receiver can only be responsible for mofussil collections if he is in position to exercise control over them. But here the parties insist upon the accountability of the receivers and at the same time object to put them in a position to exercise effective control." (1)

\*

\*

\*

\*

\*

(1) *Sattya v. Golapmonee* 5 C. W. N. 223, 227—230. See also *Rahimu-*

*ddin v. Fastuddin*, 9 Dac. L. R. 23 (1959).



"Under these circumstances, it seems to me that the applicant has failed to show that *prima facie* ground exists for supposing that the receivers are liable for anything except that which appears in their accounts. I express no opinion whether this finding will affect in any way any issue which the parties may seek to raise by suit as to any larger accountability on the part of the receiver."

"I must disallow all the exceptions, and I pass the accounts filed and direct that the applicants who filed exceptions do bear and pay their costs and pay the receivers' costs. The receivers will be entitled to their costs as between attorney and client."(1)

[Note that the Court can now summarily (*i.e.*, without a regular suit) enquire into the loss occasioned by the wilful default or gross negligence of the receiver under the new provision of O. 40, r. 4 : 40 C. W. N. 479 ; 47 C. W. N. 400 ; 1953 B. 105].

The receiver is but an officer of the Court appointing him, and is, therefore, bound to account to that Court for all property which he has received. It is his duty to keep his accounts and vouchers in such condition that they will be ready for examination at any time.(2)

It is not compliance with the letter or the spirit of r. 3, O. XL, of the Civil Procedure Code, merely to examine the accounts submitted by the receiver, and ascertain whether the alleged payments made are supported by vouchers. Whenever property or funds come into the hands of a receiver pending litigation, the Court may require him to report his acts and doings and to render an account in order to ascertain the condition of the property, and to enable the Court to settle the rights of, and do justice to, all the litigant parties ; when the accounts of the receiver come up for adjustment, he is a party in interest, entitled to be heard, and it is the duty of the Court to see that his rights are protected ; but so, also, all other interested parties are entitled to notice and an opportunity to attend and be heard. All persons, having an interest in the estate which the receiver represents, have the right to be present, and be examined on any subject pertinent to the enquiry, which springs out of the

---

(1) *Sattya v. Golapmonee* 5 C. W. N. 223, 231, dist. in *Safar v. Rahim* 47 C. W. N. 440, *Baldeo v. Gauri Shankar*, 1959 P. 323.

(2) See *Mohini v. Baroda* 14 C. L. J. 445 which also deals with fees for legal assistance.



proceeding itself, and to take exception to the receiver's accounts. Courts are disposed to hold receivers to great strictness in rendering their accounts; and a thorough investigation of the accounts and vouchers is proper where the rights of infants are involved. A receiver is bound to exercise the same degree of diligence in keeping down expenses and in caring for the estate in his possession that a prudent man would observe in connection with his own property under similar circumstances. A receiver, therefore, will not ordinarily be permitted, without the sanction and authority of the Courts to incur any expenditure which will seriously diminish the funds entrusted to his charge, and it is his duty, if he wishes to protect himself, to apply to the Court for instructions as to expenditure, and to keep regular accounts of all items of receipts and expenditures.

Where a receiver has laid out money without a previous order of Court, and the transaction is proved by him to have been beneficial to the parties in interest, he is entitled to be allowed credit in his accounts for the amount thus expended.

In general, a receiver will not be allowed to make interest for his own benefit upon funds in his hands and will be answerable for interest upon the balance.

A receiver may, therefore, be charged with interest on moneys improperly kept in his hands, although he has passed his accounts, and all parties have expressed themselves satisfied; and, for this purpose, an enquiry may be directed as to what money he has received from time to time, and how long he has kept it in his hands.

If an order has been made authorising expenditure, after notice to all parties interested, and has remained unimpeached, it is conclusive, and the expenditure cannot be questioned on the receiver's final accounting. But if an order authorising expenditure is made upon the *ex parte* application of the receiver, without notice to the interested parties, they are at liberty to contest its correctness upon the receiver's final accounting, and the Court may investigate and determine the correctness of all the receiver's accounts, notwithstanding that a partial report has been previously approved.



A receiver's accounts, which have been filed and vouched before an examiner, can be re-opened on the discovery of errors in them, notwithstanding that the Judge's certificate is attached, and a receiver may be surcharged on his accounts, notwithstanding that he has been discharged.

No appeal lies from directions given by the Court in passing a receiver's account.(1)

A Court having appointed a receiver in a suit, has authority, incidental to its jurisdiction, to order him to account, although the suit may be no longer pending. The estate is in its hands, and the receiver is its officer, and the dismissal of the suit by an Appellate Court does not alter that state of things. The Original Court in such a case may permit parties interested to intervene on questions as to the accounts, and may deal with costs and other matters.(2)

In a suit, by a plaintiff interested in the estate, wholly based on the alleged illegality of its transfers, by the executors named in the Will of a Hindu, to the Administrator-General (Act II of 1874, s. 31), decrees were made by the High Court, Original and Appellate, in the plaintiff's favour. The Judicial Committee, however, held the transfer legal; and the suit, brought against the Administrator-General and the executors as co-defendants, was dismissed. *Held*, on the plaintiff's petition for such modification of the order dismissing the suit as would maintain what had been ordered below relating to the accounts, thereby enabling the High Court to bring matters in dispute to an end, that there were no grounds for the amendments. Their Lordships' opinion was that the High Court would not be deprived of any jurisdiction in that respect by the dismissal of the suit. If it should be necessary to the carrying out of the transfer that the Administrator-General should take proceedings, he could do so. To make orders upon the Court's receiver was within its powers;

---

(1) *Mohini v. Ram* 14 C. L. J. 445 : 12 I. C. 780 ; 47 C. W. N. 400.

(2) *Administrator-General v. Prem Lall* 22 I. A. 203 : 22 C. 1011. A receiver may be ordered to pass his accounts and pay over the

balance although the action has been dismissed. *Pitt v. Bonner* 5 Sim., 577, or the proceedings have been ordered to be stayed. *Painter v. Carew*, Kay, App., 3644 ; Kerr, 33.



and either the receiver or the executors could be called to further account without the petitioner being met by the defence of prior adjudication of the matter (s. 13 of the former Code of Civil Procedure).(1) During the course of the judgment their Lordships observed as follows :—

“As to the first of these reasons, although a receiver has been appointed, who now holds and administers the estate of the testator he is merely the officer of the Court, and the estate must, for all legal purposes, be regarded as being *in manibus curiæ*. It appears to their Lordships to be extravagant to suggest that the Court has not ample jurisdiction, without the examination of these accounts, to make just allowances to their own officer, to permit parties interested to intervene in the examination of these accounts, to make just allowances to their officer for his administration and to deal with all questions of costs connected with the investigation of his accounts as between him and any parties interested who may be allowed to appear and take part in it.”(2)

The same remedies appear to be available against a receiver after he has been discharged.(3) So where a receiver who had been discharged had not paid his balance he was ordered to pay in the same and also the amount allowed for his salary together with interest on both sums at 5 per cent. from the day appointed and to pay the costs of the application.(4)

Where the receiver's employees to whom the management had been improperly delegated had misappropriated funds, a reference was made to take an account of the receivership charging the receiver with all sums actually received by him, or which but for his wilful default, he ought to have received, on the best basis which, under the circumstances, he could adopt.(5)

A suit was instituted by the present receivers of an estate against the former receivers (before the accounts of the latter had been passed by the Court) for the recovery of a certain sum which

(1) *Administrator-General v. Prem Lall* 22 I. A. 203 : 22 C. 1011.

(2) *Ib.*

(3) *Kerr*, 331.

(4) *Harrison v. Boydell* 6 Sim., 211.

(5) *Balaji v. Ramchandra* 19 B. 660, 663.



the plaintiffs alleged the defendants failed to realise on behalf of the estate :—*Held*, that no such suit was maintainable.(1)

O. 40, r. 4 deals with enforcement of receivers' duties and applies to the case of misappropriation also being a residuary provision intended to deal with all cases of loss. Under O. XL, r. 4, of the Code of Civil Procedure an application can be made for execution being levied against the properties of a receiver in the hands of his legal representatives, in respect of his misappropriation of the *income* of the properties entrusted to his charge.(2) The Court should first direct the receiver to submit the accounts for the period during which he was in possession of the properties. The plaintiff is then given an opportunity to object, surcharge and falsify. The objections are heard and the Court decides the amount which the receiver has to pay. He is directed to pay within a certain time. If he fails his property is attached. In an appeal the receiver may question the correctness of the amount said to be due from him.(3) The proper procedure to bring to sale the properties of a receiver is by way of execution and not by separate suit.(4) This is a summary process.(4a) Order for arrest is illegal.(4b) For prosecution for offence under Municipal law permission of the court is necessary.(4c)

An interlocutory order for the examination of the accounts of a receiver cannot be treated as an adjudication of any right claim or defence set up and is not a decree.(5)

An order making the receiver liable is not appealable unless under the operative part of r. 4 there is an order of attachment.(6)

As to the rights and duties of receivers of attached property, see further § 26 of Chapter IV. A receiver cannot acquire newly issued shares in his name, as the privilege is conferred by s. 105-C of the Companies Act.(7)

(1) *K. B. Dutta v. Shamal* 41 C. 92.

(2) *Raman v. Gopala* 39 M. 584.

(3) *Palaniappa v. Palaniappa* 43 M. L. J. 707. As to accounting on basis of wilful default and neglect, see *Subal v. Jatindra* 53 C. 881: As to re-opening account, see *Mohini v. Baroda* 14 C. L. J. 445.

(4) *Raman v. Gopala* 39 M. 584; *Safar v. Rahim* 47 C. W. N. 400. Cf. 1954 N. 366.

(4a) *Chapar v. Kabil* 1943 C. 244 ("Court" in O. 40 is the appointing Court); *Jekison v. Nana* 1953 B. 105.

(4b) *Gurumurthi v. Ramaswami* 1931 M. 760.

(4c) 1960 Cal. 444.

(5) *Shamul v. Lakhi* 13 C. L. J. 459.

(6) *Ganesh v. Satya* 4 P. L. J. 636; *Aruna v. U. Po* 1925 R. 266; *Keshav v. Ram* 1950 P. 241.

(7) *Mathalone v. Bombay Life Assurance* 1953 S. C. 385.



## CHAPTER VI

### REMOVAL OF RECEIVER AND DISCHARGE OF RECEIVER AND SURETIES

§ 30. Jurisdiction to remove and discharge receiver. § 31. Removal of receiver—(a) upon his own application—(b) upon the application of the parties. § 32. Final discharge of receiver. § 33. Discharge of sureties.

§ 30. The power to terminate flows naturally and as a necessary sequence from the power to create. The power of the Court to remove or discharge a receiver whom it has appointed may be exercised at any stage of the litigation. It is a necessary adjunct of the power of appointment and is exercised as an incident to, or consequence of, that power; the authority to call such officer into being necessarily implying the authority to terminate his functions when their exercise is no longer necessary, or to remove the incumbent for an abuse of those functions or for other cause shown, and the cases upon this branch of the subject will resolve themselves into two classes, viz., cases of removal or substitution for cause, and cases of final discharge because of the necessity of the appointment having ceased to exist.<sup>(1)</sup>

A distinction indicated by the terms themselves is to be drawn between the removal and the discharge of a receiver. The discharge of the receiver is, in general, the termination of the receivership, while the removal of the receiver upon his own motion or for cause, and the substitution of another person or persons in his stead, is a proceeding not inconsistent with the continuance of the receivership. The rules of law, however, which regulate the removal of a receiver are, in general, applicable to the case of his discharge. A receiver is removed when it is made to appear that the interests of the parties concerned require it, and a receiver is discharged when the objects sought to be obtained by his appointment have been accomplished. In the one case the property

(1) High, §§ 820, 826; *Rayarappan v. Madhav* 1950 F. C. 140 (cites the

author and refers to General Clauses Act, s. 16).



in litigation continues in the possession of the Court, subject to the final decree, while in the other case it passes pursuant to the decree to the party entitled. The power of removal being incident to the powers of appointment, the Court whose officer the receiver is, may, in a proper case, direct his removal, and may impose such conditions in connection therewith as seem just. The Court is not limited in respect of time in the matter of the removal of the receiver, but may act thereupon whenever it seems proper and at any stage of the litigation. [The terms 'remove', 'vacate' and 'discharge' are often used indiscriminately but context may clear the sense : Alderson, s. 635.]

As regards the power of the Court to remove a receiver for cause and to substitute another in his stead, it is to be observed that the exercise of the power is regarded as a matter properly vesting in the sound discretion of the Court, and hence to be governed by the circumstances of the particular case. It is difficult, therefore, to frame any definite rules susceptible of general application, and the power of removal for cause is referred to the broad and undefined region of the discretionary jurisdiction of Courts of Equity.(1) The removal of a receiver and the appointment of another in his stead does not have the effect of invalidating claims against the former receivership, since the management of the estate is one and the same, though it becomes necessary to change the receiver.(2) All proceedings which directly affect the receivership ought regularly to be commenced in the same suit and before the same Court in which the appointment of the receiver was made. Accordingly a proceeding to remove or suspend a receiver must be commenced by motion in the suit in which he was appointed. It was the early rule in equity that the application for removal of the receiver could be made only to the Court by which he had been appointed and whose officer he was.(3)

(1) High, § 821 ; Beach, § 776.

(2) High, § 827 ; 1954 C. 386.

(3) High, § 827 ; it is here pointed out that this doctrine has been essentially modified in the United States in which a receiver may, under various circumstances, be removed by Courts other than that by which he was appointed. This qualification of the rule was an

almost necessary out-growth of the complex system of State and Federal Courts and of the power of the removal of causes from one of these classes of Courts into the other. It is also sometimes provided for by Statute. See *Buddinath v. Bycant* 2 Tayl. & Bell., 192, 193 [a receiver is only amenable for his acts and accountable to the Court appointing him].



If a person has any reasons to urge why a receiver should be discharged or put out of possession, application must be made to the Court in which the suit is filed and in which the receiver has been appointed.(1)

The application to remove or discharge a receiver is ordinarily made upon motion in the cause in which he was appointed on notice to all parties and the receiver, or the direction for the discharge may be given in the decree at the hearing or in the order upon further considerations.(2) The general rule, however, is that where a receiver is served with a petition in the cause he should not appear and will get no costs of appearance if he does so.(3) Therefore a receiver, though served, is not entitled to appear at the hearing of the application unless a personal charge is made against him. If he appears he will not be allowed the costs of his application(4) except in a special case.(5)

Upon a motion to vacate an order appointing a receiver, the motion being made by the defendant and assented to by plaintiff, the receiver himself should not be heard in opposition since he is not a party in interest and has no standing in Court to oppose the motion, and cannot interfere in question affecting the rights of the parties or the disposition of the property in his hands.(6)

§ 31. As already observed, this may take place either upon the application of the receiver himself appointed in the cause or upon the application of the parties thereto over whose property he has been appointed. As to receivers of attached property, see further § 22, *ante*.

It is not, in general, the policy of the Courts to remove a receiver upon his own application after he has once accepted the office and entered upon the discharge of his duties. This is the rule partly because of the unwillingness of the Courts to charge the estate with the expense of

(a) Upon his own application.

(1) *Dinnonauth v. Hogg*, 2 Hay, 395, 396 (1863); *Jagdish v. Ganesh* 1953 P. 253 (though appointment by appellate Court).

(2) *Kerr*, 344.

(3) *Ib.*, 215; *Herman v. Dunbar*, 23 Beav., 312.

(4) *Kerr*, 344; *Herman supra*.

(5) *General Share Co. v. Wetley*

*Brick Co.* 20 Ch. D., 260, 267, where an applicant who had improperly served the receiver was ordered to pay his cost of appearances, but the circumstances were peculiar.

(6) *L'Engle v. Florida Central Ry. Co.* 14 Fla., 266 (Amer.), cited in High § 830.



such a proceeding and partly because it is contrary to the theory upon which justice is administered in a Court of Equity to allow charges of this nature which necessarily cause delay in collecting and settling the affairs of the estate affected by the receivership. It may be laid down, therefore, as a settled rule that the Court will not remove or discharge a receiver except where good cause therefor can be shown, and it seems also that generally this must be something arising subsequently to the acceptance of the office.(1) Accordingly, where the receiver accepted the office at the request of the defendant and was subsequently incapacitated from performing the duties of his office by reason of blindness he was discharged upon his own petition : (2) but where the motion for relief was based upon the fact that the duties of the receivership interfered with the receiver's own private business, the application was refused.(3) In a case where the receiver wanted to go to Europe on his own affairs and remain a year, the Court allowed the receiver to be discharged, gave him his costs and appointed a new receiver.(4) A receiver who wishes to be discharged and cannot show any reasonable cause for putting the parties to the expense of a change will not be discharged on his own request, unless on the terms of his paying the cost of the appointment of another receiver and consequent thereon ; but where a receiver had acted for many years and had paid in his balance, the Court would not charge him with the costs of his removal and the appointment of a new receiver.(5) A receiver ought not to present a petition to be discharged, to come on with the cause on further directions, as the Court would make the order on further directions without such petition.(6)

It is, as of course, an elementary proposition that a Court of Equity will not sanction or continue a receivership which has been created collusively or fraudulently, and that a receiver so appointed will be removed upon

(b) Upon the application of the parties.

(1) Beach, § 782 ; Kerr, 339 *et seq* ; High, § 838 ; *Smith v. Vaughan*, Cas. Temp. Hardw. 251 ; *Richardson v. Ward*, 6 Madd. Ch., 266 ; *Edwards on Receivers*, 660.

(2) *Richardson v. Ward*, 6 Madd. Ch., 266, where the receiver was allowed the costs of the proceeding,

(3) Beach, § 782, citing *Beers v. Chelsea Bank*, 4 Edw. Ch., 277.

(4) *Purde v. Rapalje*, cited in *Edwards on Receivers*, 661, and referred to in Beach, p. 733.

(5) Kerr, 339, 340, citing *Cox v. Macnamara*, 11 Ir. Eq., 356.

(6) *Stillwell v. Mellersh*, 20 L. J. Ch. 356.



proof that the appointment was made by collusion between the parties, or in fraud of the rights of any of the parties in interest.(1) When it subsequently appears that the appointment was improvidently made, the Court may unquestionably vacate the appointment and thus remove the receiver but the Court may properly require as a condition precedent to an order vacating the appointment that the receiver's expenses and compensation be provided for by the moving party. Where the receiver's security is insufficient the Court may remove him summarily and direct the delivery of all the assets to his successor, if he neglects or refuses to procure additional sureties.(2) Where a receiver becomes bankrupt he will be discharged and a new receiver appointed.(3) If a receiver has been wrongly appointed over property of a person, not a party to the cause he will be discharged, although there has been an abatement by the death of the sole defendant.(4) When a receiver has been appointed temporarily in an *ex parte* proceeding or before answer, and it subsequently appears from the defendant's pleading or otherwise that the appointment ought not to have been made or that the complainant has presented no case for the intervention of a Court of Equity, it is proper that the receiver should be removed. So where it is made to appear that there was no necessity for the appointment of the receiver or where it is shown to the satisfaction of the Court that all the usual grounds for the appointment of a receiver—such as imminent danger to the property, fraud, insolvency and the like—are wanting, the Court will remove the receiver and restore the *status quo*. But where a receiver enters in good faith upon the discharge of his duties and the parties in interest acquiesce for a considerable time, their laches may be such as to defeat a subsequent application on their part looking to the removal of the receiver.(5) Since absolute impartiality as between the parties to the litigation is an indispensable qualification of a receiver, upon an application for his removal, the Court may properly consider his past relations to the parties as well as his present sympathies. And when it is shown that he was the nominee of one hostile party and bitterly opposed by the other and that he

(1) Beach, § 784; Alderson, s. 643

(2) Beach, § 775.

(3) Kerr, 342; Dan. Ch. Pr., 1716.

(4) *Ib.*, 237, citing *Lavender v. Lavender Ir. R.*, 9 Eq., 593.

(5) Beach, § 780.



was appointed under the mistaken belief that all interests had united in his selection and that by reason of his interest his efficiency as an officer of the Court is impaired, it is proper to remove him.(1) The mere fact of relationship between the receiver and the plaintiff in the action in which he was appointed, not, of itself, sufficient ground for his removal, such relationship affording, at the most, merely a circumstance to be taken into consideration at the time of his appointment, it being the general rule that no relative of either of the parties ought to be selected as receiver. But where, in addition to relationship, bias and improper conduct are shown, a ground is made for his removal.(2)

It is an established rule that a receiver will not be arbitrarily removed and another person substituted in his place in the absence of a substantial ground and merely because certain parties in interest desire it. But it is competent for the Court to remove one receiver and to substitute another in his stead, by consent of all parties when the proceedings are *bona fide* and when there is no attempt to traffic in the receivership.(3) Where a receiver had been appointed in an administration-suit, another receiver who would act at a lower salary was, on the application of a mortgagee of a tenant-for-life of the property, ordered to be substituted for him.(4)

The rule that a receiver may be removed for misconduct or breach of trust arises out of the nature of the office and the supervising power of the Court of Chancery. Whenever the receiver is guilty of misfeasance or malfeasance in office it is the duty of the Court to call him to account, and in a proper case it has the undoubted right to order a summary removal.(5) Either mismanagement or incompetence is a ground for removing a receiver.(6) A receiver will be removed if his appointment has been an improper one,(7)

(1) High. § 821 ; *Sripati v. Bibhuti* 53 C. 319.

(2) Beach. § 786 ; High. § 821 ; and as to where a party in interest has been appointed, see *Beach*, § 790.

(3) Beach, § 789 ; High, § 827.

(4) *Stanley v. Coulthrust* W. N. (1868), 305.

(5) Beach, § 783.

(6) *Gonesh v. Troylucko* Re C. T. Davis, Suit 294 of 1881, Cal. H. C. O. O. C. J., Cor. Trevelyan, J. 23rd March, 1887 ; *Ramkumar v. Ashu* 1929 P. 114.

(7) Re *Lloyd*, 12 Ch. D. 448 ; *Neilman v. Neilman*, 43 Ch. D., 198 ; Re *Wells*, 45 Ch. D., 569 ; *Brenan v. Morissey*, 26 L. R. I.R. 618, cited in *Kerr*, 341.



if he is irregular in carrying in and passing his accounts : (1) if his conduct has been such as to impede the impartial course of justice ; (2) or to amount to gross dereliction of duty ; (3) and when a receiver appointed on behalf of incumbrancers has been guilty of gross negligence in the discharge of his duties, he may be removed upon their application and may be required to pay interest upon the balances from time to time in his hands and to pay the costs of the proceedings for his removal. (4) Upon a petition to remove a receiver the two sureties joining in the petition and one of the charges of misbehaviour against the receiver was his letting the owner of the estate continue in possession of part, by whose going beyond sea a loss was likely to happen to the estate, Lord Hardwicke said : "That (the sureties joining in the petition) varies not the case : for if people voluntarily make themselves bail or sureties of another, they know the terms ; and will be held very hard to their recognisance ; and not discharged at their request to have new sureties appointed ; for then there would be no end of it. It does not appear he could get better sureties. No regard, therefore, is due to their application, unless for benefit of the parties in the cause or something of that kind. The course of the Court is, that if a receiver is appointed and the owner of the estate is in possession of part of the premises, application should be made to the Court that the owner should deliver possession to the receiver, who cannot distrain on the owner in possession as he is not tenant to him. If, therefore, a loss arises, it was the parties' fault in not applying for that." (5) A receiver appointed by Court with consent of all parties will not, in the absence of proof of maladministration, be removed or discharged. A consent order does not, however, prevent a party from impugning malfeasance which relieves the consenter or when the administration has been proved to be futile. (6)

(1) *Bertie v. Lord Abingdon* 8 Beav., 53.

(2) *Mitchell v. Candy* W. N., 1873, 232, cited in Kerr, 341.

(3) *Ib.*, citing *Re St. George's Estate* 19 L. R., Ir., 586. See *Nag Koer v. Sham Lal* 1925 P. C. 257 : 92 I. C. 274 : 23 A. L. J., 1045

(retention of funds : disobedience to order to pay over).

(4) *Ib.*, *High*, § 829.

(5) *Griffith v. Griffith Vezey* Cas. Temp. Hardw., 400.

(6) *Rameswar v. Hitendra* 40 C. L. J., 431 : 29 C. W. W. 413 : 1924 P. C. 202.



On an application to remove a receiver for incompetence and mismanagement where the applicants obtained the order, but a large number of charges had been brought, which should not have been brought and which had been met by the receiver who, it was not suggested, had been dishonest; the applicants were given costs of application out of the estate on scale No. 2 as between attorney and client, the Court observing as follows :—"With regard to Mr. D's costs I have considered the matter very anxiously. No doubt he has necessitated this action, but on the other hand, a large number of charges have been brought which have been met and which should not have been brought. The receiver has been put to expense on account of these unnecessary charges. Under the circumstances but with much diffidence and bearing in mind that it has not been suggested that he has been dishonest, and inasmuch as the expenses of meeting this application might have been limited to the expenses of an ordinary motion, if it had been confined to the charges which have been substantiated; I think I can give him his costs out of the estate. Cost will be taxed as on a hearing in a suit on scale No. 2. There will be a direction to the taxing-officer to allow such costs as are printed in Rules 10, 14, 16 of Schedule II (Belchambers, Rules and Orders, 332.)"(1)

The view that the Court has inherent power under s. 151 of the C. P. Code to remove or discharge the receiver appointed by it as there is no specific provision for this in O. 40 of the Code(2) is hardly tenable in view of the Federal Court decision that an order removing or refusing to remove a receiver is appealable as the matter comes under O. 40, r. 1 by virtue of s. 16 of the General Clauses Act.(3) But the receiver has no right of appeal.(4)

§ 32. The discharge of a receiver may take place either during the course of the proceedings or at the conclusion of the litigation. A receiver is generally con- Final discharge of the receiver.

(1) *Gonesh v. Troylucko* Re C. T. Davis, Suit 294 of 1881, Cal. H. C. O. O. C. J., Cor Trevelyan, J., 23rd March, 1887.

(2) 1912 M. W. N. 1208; 1931 A. 72: 134 I. C. 454.

(3) *Rayarappan v. Madhavi* 1950

F. C. 140 (approves 53 C. 319, 24 P. 457, 1945 A. 371, 1938 R. 387; overrules 20 C. W. N. 789, 1924 M. 614, 1931 A. 72, 1947 P. 418).

(4) *Man Mohan v. Surendra* 60 C. 191: 36 C. W. N. 903.



tinued until judgment, but according to the decision under-mentioned(1) if the right of the plaintiff ceases before that time, the receiver may be discharged and cannot be continued at the instance of the defendant. In this case the plaintiff claiming to be an equitable creditor or incumbrancer of the defendant had obtained a receiver of the rents and profits of defendant's real estate upon which he claimed to have a charge. Defendant having paid and plaintiff having received the amount claimed to be due, the receiver was discharged, although other defendants claiming to have annuities or incumbrances upon the same property objected and asked to be heard against the discharge. Lord Eldon said: "I apprehend that with the right of the plaintiff to have the receiver must fall the rights of the other parties. It would be most extraordinary if, because a receiver has been appointed on behalf of the plaintiff, any defendant is entitled to have a receiver appointed on his behalf. My decided opinion is that the order for the receiver must be discharged and that all falls together." In, however, a subsequent case(2) the Master of the Rolls said: "There is no doubt, that where a receiver is appointed under the authority of the Court, he is appointed for the benefit of all parties interested: and therefore he will not be discharged merely upon the application of the party at whose instance he was appointed."(3) And the decisions of the American Courts appear to be to the same effect.(4) It has been said:(5) "The better doctrine, however, as deduced from the clear weight of authority and from the better legal reasoning is directly the reverse. And since the appointment of a receiver is regarded as being made for the benefit of all parties in the litigation he will not be discharged merely upon the application to the party at whose instance he was appointed, after his demand against the defendant is satisfied, when the rights of other parties are involved. The duty of the Court being to protect the rights of all parties in interest and not merely those of the plaintiffs at whose suit the extraordinary aid of the Court

(1) *Davis v. Duke of Marlborough* 2 Sw., 167, 168.

(2) *Bainbridge v. Blair* 3 Beav., 421.

(3) In other cases also of a somewhat similar character proceedings

have been stayed without prejudice to the order appointing a receiver; *Kerr*, 330.

(4) *High*, § 837; *Beach*, § 793.

(5) *High*, § 837.



has been invoked, it will not permit the receiver to be discharged upon the consent of the plaintiff, when it appears that the discharge may prejudice the rights of other parties to the action who do not consent thereto." Thus when a legatee under a will has filed a bill on behalf of himself and of such other creditors and legatees as may come in under the decree, to obtain satisfaction of his legacy, and has joined as a defendant an incumbrancer having a charge upon the estate, the receiver will not be discharged upon the consent of the plaintiff without the consent of such incumbrancer ;(1) nor where a receiver has been appointed on behalf of infant tenants-in-common, will he be discharged as to the shares of one of them who has attained twenty-one.(2)

If during the course of the proceedings the continuance of a receiver becomes unnecessary or the object of the receivership is attained, the receiver will be discharged.(2a) So where trustees were removed on account of misconduct and a receiver appointed, the latter may be discharged upon the appointment of new trustees.(3) Where a receiver of the property of a defendant had been appointed pending the determination of the rights of various claimants thereto, upon the appointment of an administrator *pendente lite* the receiver was discharged.(4) So also, in a case where a receiver had been appointed at the suit of an annuitant, he was discharged on the payment of the arrears of the annuity, there being no reason under the circumstances of the case why he should be continued : (5) and so also a receiver was discharged when the object of his appointment had been fully effected.(6)

(1) *Largon v. Bowen* 1 Sch. and Lef., 296.

(2) *Smith v. Lyster* 4 Beav., 227, 229. Even where a case arises for discharge, in order to enable discovery to be made of defalcations Lord Kenyon held and Lord Eldon approved the rule that a receiver should not have his recognizance discharged until one year after the infant has obtained his age of twenty-one. *Anon.* cited 2 Madd. Ch., 298.

(2a) *Venkatalingam v. Venkataram* 1921 M. 234.

(3) *Bainbridge v. Blair*, 3 Beav., 421, 423 ; *Secus* if there are questions still outstanding on the appointment of new trustees. *Kerr*, 340, 341, citing *Reeves v. Neville* 10 W. R. 335, and see *Beach*, § 798.

(4) *In re Colvin*, 3 Madd. Ch., 287 (Amer.), cited in *Beach*, § 798.

(5) *Braham v. Strathmore* 8 Jur., 567.

(6) *Tewart v. Lewson* 18 Eq., 490 ; see *Hoskins v. Campbell* W. N. (1869), 59 ; *Kerr*, 236.



When a receiver has been improperly appointed over property belonging to a person not a party to the cause, the Court will order the discharge of the receiver although the cause has abated by the death of the sole defendant.(1)

Although every person who considers himself aggrieved by the appointment of a receiver, has, in general, the right to relief in case it can be shown that the receivership is unauthorized, it is nevertheless the rule that the proper form of relief is not necessarily a direct and immediate application to the Court for the discharge of the receiver. It is, therefore, a matter of moment to determine who may properly make a motion for discharge.(2) Thus it has been held that where a receiver has been appointed in an action to enforce a trust contained in a will, and as such receiver has taken possession of certain lands covered by a mortgage, the mortgagee, though not a party to the suit, may apply for his discharge;(3) for under English law a mortgagee was entitled to the immediate possession of the mortgaged premises, and that, if a receiver were appointed, any steps taken to obtain possession without leave of the Court would constitute a contempt, even though the possession of the receiver were wrongful; hence such an application as this would be the only relief in this class of cases.

A defendant to the action in which the receiver is appointed, has the right to move, *pendente lite*, for the discharge of the receiver, without regard to question whether the appointment had been opposed or not.(4) The general ground upon which the application is based must always be the satisfaction of the plaintiff's claim; the payment of the judgment and its satisfaction of record after the appointment of a receiver on supplementary proceedings, does not, however, *ipso facto*, operate to discharge the receiver but the debtor may obtain an order of discharge upon payment of his lawful charges.(5)

While the propriety of discharging a receiver, like that of appointing him, is to some extent a matter of judicial discretion,

(1) *Lavender v. Lavender* Irish Reports, 9 Eq., 593, cited in High, § 832.

(2) Beach, § 793.

(3) *Thomas v. Brigstocke* 4 Russ. 64. See also *Re Southern Railway*

*Co.*, 17 L. R., Ir., 137, cited in Kerr, 237.

(4) *Grenfell v. Dean and Canons of Windsor* 2 Beav., 544.

(5) Beach, § 793.



yet in some cases the right to a discharge becomes an absolute right which the Court has no discretion to refuse ;(1) in such a case therefore the granting of the order of discharge is not a matter of discretion, but its refusal is error which may be reversed on appeal.(2) The question of discharge is sometimes complicated by the rights of third persons who are parties to the actions and it is a matter to be determined by the view which the Court takes upon the question whether the receiver, being appointed upon the application of one of the parties to the cause, can be treated as acting for the benefit of all, and, further, with reference to the question whether the receivership will be continued even though the party on whose application the receiver was appointed consents to the discharge.(3)

Where estates have been decreed to be sold, the receiver will be continued until the conveyances are executed under the decree in order that he may collect the arrears of rent.(4) A receiver becomes *functus officio* on sale of the property.(4a)

A Court of Equity, as of course, is always ready to rectify improper or irregular proceedings and where an application for a receiver has been allowed and it subsequently appears that the appointment was improper, the receiver will be discharged.(5) So in the case already cited(6) where a receiver was appointed of property which was owned by a person not a party to the action, and that fact was subsequently established to the satisfaction of the Court, the receiver was discharged. And where a receiver was appointed on an *ex parte* application upon the ground that the defendant being in possession was selling and converting property held under a mortgage and was insolvent and that there was imminent danger that the plaintiff would lose his debt, all of which allegations were fully denied by the answer the receiver was discharged.(7) Inasmuch as the receiver is appointed upon the theory that thereby the interests of all the parties concerned will be the better subserved, protected and secured, it follows, as of course, that whenever at any stage of the

(1) High, § 840.

(2) *Ib.*, Beach, § 793.

(3) *v. ante*.

(4) *Quinn v. Holland* Ridg. Temp. Hardw., 295.

(4a) *Ghansham v. Raja* 1915 M. W. N. 245.

(5) Beach, § 794.

(6) *Lavender v. Lavender* Irish Rep., 9 Eq., 593.

(7) *Furlong v. Edwards* 3 Ind. 99 (Amer.), cited in Beach, § 794.



litigation subsequent to the appointment, these interests will be promoted by the discharge of the receiver, it is the proper practice to move therefor.(1) Thus where a receiver of the property of a bank was appointed with the consent of the management, on the ground of insolvency and an application was subsequently made that the receiver be discharged, upon the ground that the bank had become solvent and that the rights of the creditors would be subserved, because their claims could then be immediately paid, it was held proper to discharge the receiver.(2) In general a receiver will not be discharged until the object for which he was appointed has been fully accomplished, or until the Court is satisfied that the exigency calling for a receiver has ceased.(3)

A plaintiff cannot obtain an order discharging a receiver and directing him to make over the property in his hands before he has established his title. In an administration-suit a receiver was appointed and was by order continued upon a preliminary decree for administration being made. It was held upon an application by the plaintiff that no order could be made for the discharge of the receiver and directing him to make over possession of the estate to the plaintiff before the completion of the administration-decree.(4) [The practice of the Court is, upon the grant of probate, to discharge the receiver : 5 C. W. N. cclxi.]

Since the final decree in the cause is generally decisive of the subject-matter in controversy, and determines the right of the possession of the fund or property held by the receiver, it is usually the case that such decree supersedes the functions of the receiver since there is then nothing further for him to act upon. If, on the one hand, the result be favourable to the defendant the functions of the receiver are at an end and it is proper to order him to account and be discharged.(5) An order of dismissal of the suit which follows on the reversal of an order appointing a receiver clearly operates as a discharge of the receiver.(6) Under the Civil Procedure Code, once a suit has been dismissed, the

(1) Beach § 796.

(2) Beach, § 796, citing *Ferry v. Bank of Central New York* 15 How. Pr. 445.

(3) See *Smith v. Lyster* 4 Beav., 227.

(4) *Bhugwan v. Heera* 5 C. W. N. 417.

(5) Beach, § 799.

(6) *Prem Lall v. Sambhoo* 22 C. 960—973.



Court dismissing it is *functus officio* except that it may stay execution of its own decree or order for costs. Its jurisdiction extends no further in regard to a suit which has ceased to be a pending suit.(1) If, on the other hand, the controversy terminate favourably to the plaintiff or the party at whose instance the receiver was appointed, it will usually devolve upon him to carry out the decree of the Court according to the nature of the receivership and his powers under the decree.(2) It has been said that the determination of the suit, however, will not *ipso facto*, discharge the receiver, but his functions must be terminated by a formal order of Court.(3) A receiver was appointed in a testamentary suit in which judgment was given declaring the will to be a genuine document ordering probate to issue, and discharging the caveat which had been entered. The applicant for probate upon the conclusion of the judgment applied that the receiver might be discharged. It was objected that a substantive application for that purpose should be made. This, however, was held to be unnecessary and the Court ordered that the receiver should out of funds first pay the duty in respect of the probate, and upon the grant of probate he be discharged and pass his accounts.(4) Unless the minutes of the order appointing or continuing a receiver and manager contain a provision for his discharge, an application to the Court is, in general, necessary to divest the possession of the receiver. The appointment of a receiver made previous to judgment will not be superseded by it unless the receiver is only appointed until judgment or further order.(5) The receiver may, however, be continued by the decree.(6) The Court has jurisdiction notwithstanding a receiver has been discharged, to surcharge him in his accounts ;(7) or to order him to pay his balance together with the amount allowed him for his salary and interest.(8)

---

(1) *Yamin v. Ahmed* 21 C. 561, 563—565; see *Author's Law of Injunctions*.

(2) *Beach*, § 799.

(3) *Ib.*, High, § 834; *Shankar v. Behari* 1925 L. 445; *Muthu v. Mayandi* 1930 M. 67 (appellate Court). As to the effect of a conditional order of discharge, see *Bepin v. Bonnerjee* 26 C. W. N. 361.

(4) In the goods of *Luchminarain Bogla* (deceased) 5 C. W. N. cclxi.

(5) *Kerr*, 339.

(6) See *Motivahu v. Premvahu*, 16 B. 511, 512 (1892).

(7) *Re Edwards*, 31 L. R. Ir. 242, cited in *Kerr*, 331.

(8) *Harrison v. Boydell* 6 Sim., 211.



When the Court has taken possession of an estate by a manager or consignee, it will, as against all parties for whose benefit the possession has been held, refuse to permit its officers to be discharged until the amount due to them has been paid.(1)

A receiver though discharged by the dismissal of the suit in which he was appointed is entitled to a lien on the estate for all his just claims and allowances ; and the Court will not compel a receiver who has been discharged, to make over the property in his possession until his lien has been satisfied or provided for by a sufficient indemnity.(2)

The decree may direct a permanent appointment, in which case the discharge of the receiver is a matter of discretion. The undermentioned case(3) was an appeal from an order (17th February, 1888) of the High Court, affirming an order (13th September, 1887) of the District Judge of Tanjore. A divisional Bench of the High Court (Collins, C. J., and Parker, J.) made the above order on the petition filed in the original Court on 24th August, 1887, by the surviving widows of the late Maharajah of Tanjore, they having been parties to a decree in *Jejoyamba Bayi Saiba v. Kamakshi Bayi Saiba*.(4) That decree (8th May, 1868) declared "that the permanent appointment of a receiver and manager of the property was necessary ;" and directed "that the Collector, if possible, should be continued as receiver and manager ; that, if such was not practicable, the Civil Court of Tanjore should appoint a receiver and manager after taking proper security, and from time to time make fresh appointments during the lives of the widows and the survivors or survivor of them, or until it shall be considered by the Civil Court that a receiver and manager is no longer necessary."

---

(1) *Fraser v. Burges*, 13 Moo. P. C. 346, cited in *Moran v. Mittu* 2 C. 69.

(2) *Premvall v. Sumbhoo* 22 C. 960, 973. The order made in this suit was "that the receiver do proceed to pass his final account and on satisfaction of what may be due to him and on being sufficiently indemnified as to any engagements properly entered into by him

during his management of the estate he do make over possession to the Administrator-General." Costs of the receivers were directed to be paid out of the estate and to be taxed as between attorney and client.

(3) *Ex parte Rani Mathusri Jijai Amba* 13 M. 390 ; *Mathusri v. Mathusri* 23 I. A. 28 : 19 M. 120.

(4) 3 Mad. H. C. Rep., 424.



“The reason given in the order from which this appeal was preferred was thus given:—

“The decree clearly contemplates that the receiver shall be permanent during the lives of the widows, and the survivors or survivor of them; and having regard to the history of the litigation, the nature of the property, and the circumstances of the family, we are clearly of opinion that the District Judge exercised a right discretion in refusing this application.”

Exparte Rani  
Mathusri  
Jijai Amba.

All the parties having joined in applying for a certificate under s. 602, Civil Procedure Code, the same Judges recorded their reasons, more fully, as follows:—

“As the surviving Ranis are the only persons at present entitled to participative enjoyment of the estate, and as all have united in this application, we think that there is a substantial question of law which will admit of an appeal to the Privy Council within the meaning of s. 596 of the Civil Procedure Code, but we think it right to place on record our reasons for holding that the District Judge exercised a sound discretion in refusing to grant the prayer for the removal of the receiver. The circumstances of the litigation, which led to the appointment of a receiver, are fully reported in the third volume of the Madras High Court Reports, pp. 424—455. The property in question was seized by Government at the annexation of the Tanjore State, not under colour of any legal title, but by the forcible exercise of Sovereign power. It was afterwards transferred to the senior widow by order of Government, dated 21st August 1862, as a matter of grace and favour. The order, after making over the management and control to Her Highness, went on to state:— ‘It will be her duty to provide in a suitable manner for the participative enjoyment of the estate in question by the other widows, her co-heirs. On the death of the last surviving widow, the daughter of the late Raja or, failing her, the next heirs of the late Raja, if any, will inherit the property.’ Within four years of the transfer of this estate to the senior widow this suit was brought by two of the junior Ranis. They complained of various acts done by the senior widow in detriment of their rights, and more especially that she had, without their consent,



adopted a boy as a son of the late Raja, to whose possession she had transferred or was about to transfer the whole property. That son was included as the fourteenth defendant, and the first defendant alleged that she herself and all the other Ranis were entitled only to receive maintenance from him. The Court *held* that the evidence as to the senior widow's management of the estate since it had been under her charge, showed reckless dealing with the property and the lavish expenditure of large sums for purposes of which the accounts afford no satisfactory explanation. Not only has the large sum of ready money received from the Government and the whole proceeds of the immovable property been dissipated, but a considerable portion of the movable property itself has been got rid of and debts of a considerable amount been left unpaid. We are at the same time of opinion that it would be most imprudent to entrust the management of the property to the second defendant or to either of the other junior widows. Little, if anything, we are sure, would be gained as respects the care and preservation of the property, and there would very soon be violent disputes and further litigation. It appears to us to be absolutely necessary that the estate should remain in the custody and under the control and direction of a competent receiver and manager appointed from time to time by the Civil Court and invested with general powers for the management and regulation of the property and its enjoyment, and the application of the rents and profits. The Collector is at present the appointed receiver, and there is no doubt that it is of the very greatest advantage of the estate, and the parties' interest that he should continue to act as receiver and manager as we trust he will be able to do. The continuance of his appointment will, therefore, be decreed; but should it be necessary, the Civil Judge must appoint a fit and proper person in the Collector's place, taking sufficient security for the discharge of his duties and fixing a fair and reasonable remuneration for his services.

"The High Court, in the view that it took of the case, found it unnecessary to raise an issue as to the validity of the alleged adoption of the fourteenth defendant, observing that if found to be valid (a result at present very problematic), his present claim by right of adoption being as lineal heir of the



Raja in preference to the widow's would not be maintainable. To that claim the absolute ownership of the Government in the interval between the death of the Raja until the act of State by which the transfer was made to the widows and daughter is, we think, fatal." See 3 Mad. H. C. Rep., p. 455.

"More than twenty years have passed since the decree, and we are of opinion that the same reasons which, in 1868, made the appointment of a receiver imperatively necessary still exist in all their force. Old age and twenty years more of that seclusion which is the lot of ladies of exalted rank in this country can hardly have made their Highnesses better fitted for the management of an estate whose annual income is more than 1½ lakhs of rupees (the moveable property in jewels and cash alone being worth nearly 20 lakhs). If given back at all, the chief management would, under the terms of the Government order, vest in the senior widow,—a lady now over 70 years of age, and who twenty-four years ago, on 5th January 1864, intimated to the then Civil Judge of Tanjore that she had formed the resolution of withdrawing from all worldly transactions and transient pleasures, and resolved from that moment to lead a life of seclusion, &c.," see 3 Mad. H. C. Rep., p. 437. "For more than twenty years this decree has secured the state and these ladies' immunity from litigation, but, at the death of the last surviving widow, the Government order vests the estate in the daughter of the late Raja or, failing her, in the next heirs of the late Raja if any." The Judges concluded by adverting to the probability of future litigation if the management of the property should be restored to the widows.

On appeal to the Privy Council it was argued that under the Proceedings of the Madras Government of 21st August 1862, printed in the report of *Jejoyamba Bayi Saiba v. Kamakshi Bayi Saiba*(1) and the construction put upon it in the judgment in the later suit the property vested in the Ranis for the estates of Hindu widows. They, thereby, became full owners, and represented the estate, subject to the legal restrictions upon their disposing of the property. One of the incidents of a widow's

---

(1) 3 Mad. H. C. Rep., 428.



estate was a right to management. Of this she could only be deprived on the objection of some one interested in the good management of the property; but no such objection was made here. The present application was supported by all who had a vested interest in the estate. The receiver had been appointed in consequence of the proceedings in a suit which had come to an end. Their Lordships were, however, of opinion that it was entirely a matter of discretion with the Court as to the removal of the receiver, and looking to the case, their Lordships thought that the Court exercised a very sound discretion in not removing him, and the appeal was dismissed.(1)

§ 33. The sureties of a receiver will not be discharged at their own request and no regard will be had to their application unless it is for the benefit of the estate or unless there be special circumstances in the case.(2) as for instance where underhand practice can be proved and the persons secured can be shown to be connected with such practice.(3) Where also a surety had become such in violation of partnership articles, he was discharged on his own application.(4) When a surety procures his discharge during the continuance of the receivership, the receiver must enter into a fresh recognisance with new sureties. When a surety becomes bankrupt the receiver is usually required to enter into a fresh recognisance with two or more sureties. If a surety dies without leaving any property available for the satisfaction of the recognisance the Court will direct a new surety to be appointed; but the rule is otherwise where he leaves real property bound by his recognisance.(5) The condition of the bond is that if the receiver shall from time to time and at all times so long as he shall continue as receiver duly and faithfully in all respects discharge the duties and obligations which devolve upon him and duly pass his accounts, then the bond shall be void, but otherwise it will remain in full force.

(1) *Ex parte Rani Mathusri Jijai Amba* 13 M. 390.

(2) *Griffith v. Griffith*, 2 Ves., 400; Kerr. 241.

(3) *Hamilton v. Brewster* 2 Moll.

407; Kerr, 347.

(4) *Swain v. Smith*, Seton. Decr., 680.

(5) Kerr, v. ante, 347, 348.



If the receiver faithfully discharges his duties and passes his account and pays the balances due by him, the surety is discharged, and he is at liberty to apply to have the recognisance vacated as to him. Should this be not so, an action must be brought on his bond against the surety who is answerable to the extent of the amount of the recognisance for whatever sum of money, whether principal, interest or costs, the receiver has become liable for, including the costs of his removal and of the appointment of a new receiver in his place. In ascertaining the liability of the surety the Court proceeds upon the principle that the surety is liable (to the extent of the amount of the penalty) for all sums of money which the receiver himself was properly liable to pay into Court or account for.(1)

A surety of a receiver is liable, to the extent of the amount secured by his recognisance, for the payment of interest on balance improperly retained by the receiver as also for the costs of proceedings in Court, necessarily or properly incurred in consequence of the receiver's default, such as the costs of a proceeding to take accounts, of an attachment for failure to account, of an application for his discharge and for the appointment of another person in his place, and of any proceedings taken to enforce the recognisance.

The liability of a surety upon the bond of a receiver conditioned for the due discharge of his duties is limited to cases of a violation of those duties which may properly be said to be within the scope of his appointment as receiver, in other words, the surety is responsible only in respect of liability incurred by the receiver in his capacity as receiver.(2)

To determine whether a particular liability has been incurred by the receiver in his capacity as receiver, the test to be applied is, could the receiver be made accountable in that respect in the account proceedings; if he could not, the surety is not liable; if he could be held liable in that proceeding as receiver, the surety is liable.

A surety of a receiver, after satisfaction of the claim of the person to whom the latter was bound to pay, stands in

(1) Kerr, 349.

(2) High, § 133(b).



his place to the extent of the payment made by him, and is to be reimbursed from the sums ordered to be paid to the receiver, without derogation of his right to sue the receiver.(1)

A surety who has been compelled to pay money on account of his obligation is entitled to be reimbursed out of the balance in the receiver's hands, Lord Eldon saying: "As the receiver is an officer of the Court, and the surety is so in a sense, if there is anything due on account between them, justice requires that, upon the application of the surety, he shall be indemnified for what he has paid for the receiver out of the balance due him."(2) And a surety who pays the debt of his principal has the same right against his co-surety that he has against the principal and will be permitted to put the bond in suit as against the co-surety.(3) He can recover from his co-surety not only half the sum so paid by him but also interest thereon.(4) And he may even get a receiver over the receiver's estate.(5) Liability of the surety is co-extensive with that of the receiver whose honesty he guarantees: *Quaere*—Whether he can turn upon the legal representatives of the deceased receiver to call for accounts for which he is equally responsible by an application under O. 40, r. 4 of the C. P. Code.(6) A receiver being insane the Court ordered that his surety might pass the accounts and that on the balance being lodged the recognisance should be vacated; the surety complying was given the costs of the motion and of vacating the recognisance:(7)

(1) *Barada v. Shama* 20 C. L. J. 123: 28 I. C. 31.

(2) *Glossup v. Harrison*, 3 V. & B. 134.

(3) *Re Swan's Estate*, Ir. R. 4 Eq., 209, cited in Kerr, 351.

(4) *Ibid.*, [i.e., by way of contri-

bution; but full sum from the receiver by way of reimbursement].

(5) *Henderson v. Skarret*, 5 Ir. Eq. R. 404.

(6) *Bari Bahoo v. Rajaram* 1954 N. 366.

(7) *Webb v. Cashel*, 11 Ir. Eq. R. 558.



## APPENDIX A.

### ACT VIII OF 1859 : CIVIL PROCEDURE.

s. 92. In any suit in which it shall be shown to the satisfaction of the Court that any property which is in dispute in the suit is in danger of being wasted, damaged, or alienated by any party to the suit, it shall be lawful for the Court to issue an injunction to such party, commanding him to refrain from doing the particular act complained of, or to give such other orders for the purpose of staying and preventing him from wasting, damaging, or alienating the property, as to the Court may seem meet. And in all cases in which it may appear to the Court to be necessary for the preservation or the better management or custody of any property which is in dispute in a suit, it shall be lawful for the Court to appoint a receiver or manager of such property, and, if need be, to remove the person in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such receiver or manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property and the collection of the rents and profits thereof, and the application and disposal of such rents and profits as to the Court may seem proper. If the property be land paying revenue to Government, and it is considered that the interests of those concerned will be promoted by the management of the Collector the Court may appoint the Collector to be receiver and manager of such land, unless the Government shall by any general order prohibit the appointment of Collectors for such purpose, or shall in any particular case prohibit the appointment of the Collector to be such receiver.

Cases in which an injunction to stay waste, &c., may be granted.

Or in which a receiver or manager may be appointed.

When the Collector may be appointed receiver or manager.

s. 243. [Manager, when property attached consists of debts or immovables.]—*Quoted at p. 160.*



## ACT I OF 1877 : SPECIFIC RELIEF.

[See now Specific Relief Act 47 of 1963 omitting *inter alia* ss. 2, 5, 6 and 44 of the old Act I of 1877.]

Interpreta-                    s. 3. In this Act, unless there be something  
tion-clause.                  repugnant in the subject or context,  
                                      "Obligation" includes every duty enforceable by

"Obliga-                    law :  
tion."

"Trust."                    "Trust" includes every species of express, implied  
                                      or constructive fiduciary ownership :

"Trustee."                    "Trustee" includes every person holding expressly,  
                                      by implication, or constructively, a fiduciary character :

Savings.                    s. 4. Except where it is herein otherwise expressly  
                                      enacted, nothing in this Act shall be deemed :—

(a)                    to give any right to relief in respect of any agreement  
which is not a contract ;

(b)                    to deprive any person of any right to relief, other than  
specific performance, which he may have under any contract ; or

(c)                    to affect the operation of the Indian Registration Act on  
documents.

Specific relief                  s. 5. Specific relief is given—  
how given.

(a)                    by taking possession of certain property and delivering  
it to a claimant ;

(c)                    by preventing a party from doing that which he is under  
an obligation to do ;

(c)                    by preveting a parrrty from doing that which he is under  
an obligation not to do ;

(b)                    by determining and declaring the rights of parties other-  
wise than by an award of compensation ; or

(c)                    by appointing a Receiver.

Preventive                    s. 6. Specific relief granted under cl. (c) of s.5 is  
relief.                            called preventive relif.

Relief not                    s. 7. Specific relief cannot be granted for the mere  
granted to                    purpose of enforcing a penal law.  
enforce penal  
law.



s. 44. The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. Appointment of receivers discretionary.  
The mode and effect of his appointment and his rights, powers, duties and liabilities are regulated by the Code of Civil Procedure. Reference to Code of Civil Procedure.

[N.B.—Omission of this provision from Act 47 of 1963 is not material : O. 40 of C. P. Code, 1908 being sufficient.]

---

### ACT X OF 1877 : CIVIL PROCEDURE

[Sections 503-505 of it are the same as those of Act XIV of 1882 below. See pp. 160-161.]

---

### ACT XIV OF 1882 : CIVIL PROCEDURE

s. 503. Whenever it appears to the Court to be necessary for the realization, preservation or better custody or management of any property, movable or immovable, the subject of a suit, or under attachment, the Court may by order— Power of Court to appoint receivers.

(a) appoint a receiver of such property, and, if need be,

(b) remove the person in whose possession or custody the property may be from the possession or custody thereof :

(c) commit the same to the custody of management of such receiver ; and

(d) grant to such receiver such fee or commission on the rents and profits of the property by way of remuneration, *as the Court thinks fit*, and all such powers as to bringing and defending suits, and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits and the execution of instruments in writing as the owner himself has or such of those powers as the Court thinks fit.

Every receiver so appointed shall—

Receiver's liabilities

(e) give such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property ;



(f) pass his accounts at such periods and in such form as the Court directs ;

(g) pay the balance due from him thereon as the Court directs ; and

(h) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Nothing in this section authorises the Court to remove from the possession or custody of property under attachment any person whom the parties to the suit, or some or one them, have or has not a present right so to remove.

s. 504. When the property is land paying revenue to Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, *with the consent of the Collector*, appoint the Collector to be receiver of such property.

Courts empowered under this chapter. s. 505. The powers conferred by this chapter shall be exercised only by High Court and District Courts :

Provided that whenever the Judge of a Court subordinate to a District Court considers it expedient that a receiver should be appointed in any suit before him, he shall nominate such person as he considers fit for such appointment, submit such person's name, with the grounds for the nomination, to the District Court, and the District Court shall authorize such Judge to appoint the person so nominated, or pass such other order as it thinks fit.

N. B.—The portions in italics in s. 503 (d) and s. 504 were inserted by the Amendment Act 7 of 1888. The first part of cl. (d) of s. 503 is substantially O. 40, r. 2 of the present Code. Cls. (e)-(h) of s. 503 correspond to cls. (a)-(d) of O. 40, r. 3. The last paragraph of s. 503 corresponds to O. 40, r. 1(2). The provisions of s. 505 do not find a place in the Code of 1908, so that now a subordinate Court may itself appoint a receiver : See p. 17.



## APPENDIX B.

### ACT V OF 1908 : CIVIL PROCEDURE.

---

#### ORDER XL.\*

R. 1. (1) *Where it appears to the Court to be just and convenient*, the Court may by order— Appointment  
of Receivers.

(a) appoint a receiver of *any* property, *whether before or after decree* ;

(b) remove *any* person *from the* possession or custody of the property ;

(c) commit the same to the *possession*, custody or management of the receiver ; and

(d) *confer upon the* receiver all such powers as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of *documents* as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this *rule shall* authorize the Court to remove from the possession or custody of property any person whom *any* party to the suit has not a present right so to remove.

---

\* Sir John Woodroffe substantially referred to the provisions of O. 40 of the Code in appropriate places of his treatise. The present editor gives somewhat detailed commentaries thereon.



## SYNOPSIS

	PAGE
Allahabad Amendment : in R. 1(2) . . . . .	283
Preliminary : Law on equitable principles . . . . .	283
R. 1(1) : widens the law. Cf. old s. 503 . . . . .	283
"Where" : includes miscellaneous proceedings . . . . .	283
"It appears to the Court" : i.e., <i>prima facie</i> . . . . .	283
"Just and convenient" : <i>e.g.</i> , in— . . . . .	285
Title suit, declaratory, interpleader etc. . . . .	287
Partition suit : if waste or misappropriation . . . . .	287
Partnership suit : restricted scope . . . . .	288
Suit against trustee : if gross misconduct . . . . .	288
"    "    executor : . . . . .	289
"    "    administrator . . . . .	289
"    "    guardian . . . . .	289
"    "    life-tenant . . . . .	289
"    "    lessee . . . . .	289
Mortgage suit : if just and convenient . . . . .	289
Suit upon other charges : lien etc. . . . .	290
Suit for money . . . . .	291
Suit for specific performance . . . . .	291
"The Court may" : in its discretion . . . . .	291
"By order" : <i>ex parte</i> in emergency . . . . .	291
Cl. (a).—"Appoint" : includes 'remove' etc. . . . .	292
Who may be appointed : impartial, disinterested . . . . .	292
"Receiver" : officer ("hand") of Court . . . . .	292
<i>Legal consequences :</i>	
(i) must sue or be sued with leave of Court . . . . .	293
(ii) must be given notice under s. 80 . . . . .	293
(iii) attachment of property in his hands	
without Court's leave is contempt . . . . .	293
Two or more receivers, generally not to be appointed . . . . .	294
Joint receivers, permissible . . . . .	295
"Of any property" : future earnings . . . . .	295
Company property . . . . .	296
"Whether before or after decree" : in pending proceedings . . . . .	296
Receiver in Execution proceedings : s. 51(d) . . . . .	297
Cl. (b) : removing a person from possession . . . . .	299
Cl. (c) : committing property to receiver's custody . . . . .	299
Cl. (d) : empowering the receiver as to suits etc. . . . .	299
Appeal : from order giving powers and not direction . . . . .	300
Sub-rule (2) : limits R. 1(1) (b). . . . .	301



**Allahabad Amendment.**—In sub-rule(2) after the word “person” insert “not being a party to the suit”

**Preliminary.**—The jurisdiction of the Court in this country in the matter of receivership is governed on equitable principles originally of the English Courts of Chancery. The law in this respect is now practically the same as in England and English (sometimes American) cases are in general applicable here subject to the words of the statute.<sup>1</sup> See pp. 30-34. An Allahabad Full Bench has held that in appointing a receiver the Court cannot act outside this rule.<sup>2</sup> This should be taken with caution. See, *e.g.*, statutory receivers under s. 69A of the Transfer of Property Act, s. 118 of the Indian Companies Act. See 1956 M. 424. For inherent jurisdiction to appoint *Special Receiver vide* (1954) 1 C. 293 ; also 1962 S. C. 527.

**R. 1(1).**—It removes certain restrictions of s. 503 of the last Code and thus widens the law on the subject.<sup>3</sup> See pp. 2, 16 and notes on “Just and convenient” below.

**“Where”.**—*i.e.*, even in proceedings other than a suit.<sup>4</sup> See pp. 2, 88. If no litigation is pending, *e.g.*, if a suit is dismissed or compromised, the Court has no jurisdiction to appoint a receiver.<sup>5</sup> See p. 16. The application for appointment cannot obviously be made before the bill is filed. A *pendente lite* receivership is predicated upon a main suit.

They Privy Council in an appeal *suo motu* ordered the Subordinate Judge to appoint a receiver for the rents and issues of a Mutt property and the proceeds from offerings etc.<sup>6</sup>

**“It appears to the Court”.**—*i.e.*, *prima facie*, without prejudging the main case in any way :<sup>7</sup> See p. 1. The Court may be satisfied *suo motu* or on the application of a party, plaintiff or defendant (p. 55), or of a third party interested : p. 2. The application should be made in Court and not in Chambers.<sup>8</sup> See p. 88. The motion should be founded on affidavits (p. 56) or papers copies of which should be served with notice of the application,

1. 1949 P. 496 ; 1955 M. 430.

2. 58 A. 949 : 163 I. C. 481 : 1936 A. 495 F. B.

3. 14 C. W. N. 248 ; 1953 M-B. 35 : (1953) M-B. 1.

4. 1945 C. 293 (S. 174 of B. T. Act) ; 1945 A. 261, 264 F. B. ; 1946 P. 70 (arbitration) ; 1949 M. 283 (S. 24 of C. P. Code) ; 1951 M. 393 (probate) ; 1929 N. 119 (guardian-

ship) ; 1933 L. 437 (Companies Act) ; 22 C. W. N. 547 (Lunacy Act) ; (1955) Andh. W. R. 320.

5. 14 W. R. 384 ; 5 P. L. J. 513 : 58 I. C. 405.

6. 54 I. A. 228 : 31 C. W. N. 1021 : 1927 P. C. 131.

7. 1954 Bhopal 7.

8. 28 C. 250 ; 1927 B. 251.



though if the papers are already on the record it is sufficient to refer to them in the notice.<sup>9</sup> No rule requires affidavit for *prima facie* case, <sup>9a</sup>. But the practice is otherwise. An affidavit which gives no details but merely expresses an apprehension of future loss is not sufficient.<sup>10</sup> See p. 56. It should generally be confined to matters of personal knowledge : O. 19, r. 3. Opportunity should be given to the petitioner to adduce evidence.<sup>11</sup> Application cannot be summarily dismissed.<sup>11a</sup> A very strong ground must be adduced before a Court will interfere with private rights by appointment of a receiver.<sup>12</sup> If no case is made out, the application should be rejected and not kept in abeyance.<sup>13</sup> Petition for withdrawal of the application should not be granted as a matter of course.<sup>14</sup> If it be withdrawn or rejected, a fresh application is not barred necessarily, especially under altered circumstances.<sup>15</sup> See pp. 57, 96.

Ordinarily a suitor gets redress at the end of the litigation. Appointment of a receiver by the Court *suo motu* generally at the beginning of a litigation and sometimes without notice to a party concerned in emergent cases (p. 55) is an extraordinary remedy. A receiver may be appointed in a proper case even on oral request, <sup>16</sup> though the application was for injunction.<sup>17</sup> For *vice versa* see p. 30. Note that appointment of a receiver may sometimes be the only ultimate relief sought, *e.g.*, in a reversioner's suit for removal of a Hindu widow mismanaging and dissipating the estate.<sup>18</sup> Suit only for appointment of a receiver cannot be filed.<sup>18a</sup>

As to jurisdiction of Court to appoint receiver see § 4, p. 16. A Provincial Small Causes Court cannot appoint a receiver of immovable property : s. 7 of C. P. Code. It is only the Court appointing a receiver that can remove (suspend, dismiss) or discharge him.<sup>19</sup> See pp. 257, 258. Mismanagement, incompetency,<sup>20</sup> dishonesty and partiality <sup>21</sup> are some of the weighty reasons for removal. See further at p. 261. The onus is obvi-

9. High on Receivers § 84.  
9a. 1956 M-B. 244.  
10. 107 P. R. 1908 : 4 I. C. 694.  
11. 1936 M. 966 : 166 I. C. 112.  
11a. 1955 M. 571.  
12. 11 I. C. 403 : 62 P. W. R. 1911 ;  
1955 M. 571.  
13. 1950 T-C. 100 F. B.  
14. 1946 S. 141, 146 : (1946) Kar 21 :  
227 I. C. 129.  
15. 1942 N. 1 : 35 C. W. N. 1141.

16. 1955 M. 360.  
17. See 36 A. 19 : 22 I. C. 59.  
18. 8 M. L. T. 189 : 7 I. C. 534.  
18a. 1955 M-B. L. J. 1117.  
19. 1945 S. 75 ; 1949A. 265 ; 1953  
P. 253 (Appointment by appellate  
Court is deemed appointment by  
trial Court).  
20. 1929 P. 114 : 115 I. C. 881.  
21. 53 C. 319 : 92 I. C. 940.



ously on the party alleging such reason.<sup>22</sup> For removal upon receiver's own motion see p. 258. Final discharge is also in general a matter which addresses itself to the sound discretion of the Court.<sup>23</sup> Appeal Court will not lightly interfere.<sup>23a</sup>

**"Just and convenient".**—See pp. 27-32. These words have been taken substantially from s. 25(8) of the English Judicature Act, 1873 of which the words "just *or* convenient" have been interpreted to mean "just *and* convenient".<sup>24</sup> They have been substituted for the words "necessary for the realisation, preservation or better custody or management of any property, movable or immovable, the subject of a suit or under attachment". Therefore the law is now not restricted to the particular cases of the old section. No definite allegation of waste, damage or mismanagement is necessary.<sup>25</sup> Cf. O. 39, r. 1. Nor the property need be the subject of a suit or under attachment. See "Of any property" below. Defendant may also apply for appointment of a receiver.<sup>25a</sup> Court may appoint a receiver to accept the award of a land acquisition collector without prejudice.<sup>25b</sup>

A receiver should not be appointed simply because the Court thinks it convenient to appoint one.<sup>26</sup> What may be convenient to one party may not be just to the other.<sup>27</sup> Equities in favour of both parties should be looked to.<sup>28</sup> If there be injustice to any party, no receiver should be appointed.<sup>29</sup> Similarly appointment of a receiver cannot be made merely because it is just unless it be also convenient.<sup>30</sup> Thus where a motor truck is jointly held, but profits are withheld from the plaintiff, though a receivership may be deemed just it would be inconvenient to dispossess the defendant who has also an equal interest in the property.<sup>31</sup> The onus is on the applicant to show that it is just and convenient: It is not for the opposite party to show cause why no receiver should be appointed.<sup>32</sup> For five requisites see 1955 M. 430. For *prima facie* case for a plaintiff who lost in a proceeding under s. 145, Cr. P. C. see 1960 Andh. 79.

In dealing with an *interim* application for Receiver the trial

22. 1929 P. 114 : 115 I. C. 881.  
23. Alderson, s. 650.  
23a. (1952) 2 Raj. 1012 See p. 27.  
24. (1878) 9 Ch. D. 89, 93 ; 34 C. W. N. 440, 441 : 1930 C. 610.  
25. (1951) Mys. 55 F. B.  
25a. (1959) 2 Andh. W. R. 407 Vide p. 55.  
25b. 1934 C. 758 : 38 C. W. N. 844.  
26. 34 C. W. N. 440, 441 ; 1958 M.-P.

269 : 1958 Jab. L. J. 118 ; 1955 Bhopal 14 : 1962 M. 458.  
27. 21 I. C. 283, 285 (Oudh) ; (1955) 5 Raj. 402.  
28. 35 C. W. N. 1066, 1072.  
29. 1945 P. 404, 412 (object is not to penalise).  
30. 1941 S. 112, 114.  
31. 1954 Bhopal 7.  
32. 1937 O. 232 : 167 I. C. 302.



Court has to exercise its judicial discretion on sound principles. It must consider whether interference with the defendant's possession is required, there being a well-founded fear that the property will be dissipated or other irreparable mischief may be done unless the Court gives its protection. If the Appellate Court concludes that proper discretion was not used below, it is free to exercise its own discretion.<sup>33</sup> As to discretion (sound and not arbitrary) see § 5, p. 26. The plaintiff must make out a *prima facie* strong case and good title.<sup>34</sup> See p. 12. If the defendant is a trespasser or at best a tenant-at-sufferance and the property is valuable and requires skill in its administration, the plaintiff's claim being on a balance higher, a receiver should be appointed.<sup>35</sup> If the property is *in medio*, i.e., in the enjoyment of none, the Court may readily appoint a receiver in common interest to avoid a scramble.<sup>36</sup> See p. 28. Plaintiff must also make out the risk of probable serious loss, <sup>36a</sup> as in the case of injunction.

Mere charge or apprehension of misappropriation without proof does not justify an appointment.<sup>37</sup> Insolvency of the person in possession,<sup>38</sup> keeping land fallow and deteriorating,<sup>39</sup> waste by a life-tenant endangering reversion<sup>40</sup> etc. may be good grounds for appointment. A receiver cannot be appointed for ascertaining the real income of a property to fix the rate of maintenance.<sup>41</sup> Difficulty in getting possession on success and in realising mesne profits is also not a fit ground.<sup>42</sup>

Full opportunity for evidence against appointment must be allowed.<sup>43</sup> Courts have the fullest jurisdiction to appoint or remove a receiver in their discretion<sup>44</sup> after considering with caution the whole circumstances of the case.<sup>45</sup> There is no hard and fast rule.<sup>46</sup> Court should also consider the conduct of the applicant, *e.g.*, acquiescence, delay.<sup>46a</sup> Opinion of the trial Court in these matters is of great weight, as it has all the facts and the parties before it and is probably the best tribunal to

33. 55 I. A. 131 : 32 C. W. N. 681 : 1928 P. C. 49 : 55 C. 720.

34. 29 C. W. N. 836 ; 1939 O .61 ; 1954 Bhopal 7 ; 1958 Jab. L. J. 118 : 1949 L. 243 ; 1955 M. 430 ; 1962 Ker. L. J. 260.

35. 1949 L. 243 : 1949 Pak. L. R. 514 (Lahore).

36. 1927 P. 220 ; 1941 O. 328 ; 1953 T. C. 228.

36a. 12 I. C. 198 ; 133 S. 231.

37. 1936 M. 966 ; 1936 L. 102.

38. 1916 M. 1128.

39. 1952 N. 253 : 1951 N. L. J. 133 : (1951) N. 178.

40. 1940 S. M. 7, 123 ; 54 B 8 37.

41. 1925 M. 1245 : 89 I. C. 943.

42. 1931 L. 688 : 134 I. C. 799.

43. 1925 L. 349 : 88 I. C. 562.

44. 1932 M. 193 ; 1936 O. 337.

45. 1932 L. 82 ; 1926 S. 83.

46. 1952 Hyd. 139 (plaintiff excluded from partnership).

46a. 1955 M. 430 ; 571.



decide whether it is just and expedient to appoint a receiver : pp. 29-30. Unless the appellant can show that the trial Judge has not exercised a judicial discretion, he cannot succeed.<sup>47</sup> The Court should appoint a receiver for protection of rights or prevention of injury according to legal principles,<sup>48</sup> this being the ultimate general ground in every case.<sup>49</sup> Relief by a receiver as well as by injunction is granted generally upon the principle of *quia timet* (fear or apprehension).<sup>50</sup> See p. 12. For appointment of receiver instead of injunction on alternative prayer or oral request see 1955 M. 360.

We now discuss the subject with reference to the principal types of suits :

**Title suit.**—In a suit between rival claimants of land, for distinctive principles where it is *in medio* and where it is in defendant's possession see notes above and pp. 28-29. Such a suit may be purely declaratory<sup>51</sup> or by way of interpleader<sup>52</sup> No receiver can be appointed in a possessory suit under s. 9 of the Specific Relief Act ; p. 88.

**Partition suit.**—See p. 108. No special consideration need weigh with the Court in a partition suit between joint family members even when the property is agricultural land.<sup>53</sup> R. 1(2) applying only to the dispossession of *third* parties is no bar to the appointment of a receiver in such a suit.<sup>54</sup> But a receiver cannot be appointed in the absence of special circumstances, *e.g.* waste, misappropriation.<sup>55</sup> There should be specific act of malversation or mismanagement. This principle, often applicable to partition of Hindu joint family property, <sup>56</sup> does not apply if one co-owner exclusively occupies the whole property.<sup>57</sup> But resistance by the managing member to a member to take forcible possession does not necessarily amount to ouster : If relation be embittered the former may be a joint receiver with a third

47. 1937 O. 280 : 166 I. C. 983 ; 1955 M-B. 40 ; 12 A. 436, 438 F. B. (*per* Straight, J.—a case of injunction). See pp. 27, 30.

48. 34 C. W. N. 440 : 1930 C. 610.

49. 1955 M. B. 40 ; 1955 Bhopal 14.

50. 1949A. 112 : (1948) A. 432.

51. 1923 L. 623 ; 1927 L. 65 ; 1933A. 227 ; 1937 M. 163. *Contra*. 4 I. C. 605 : 3 S. L. R. 118.

52. 1944 O. 225 ; 216 I. C. 244.

53. 1951 N. L. J. 133 : 1952 N. 253 :

(1951) N. 178.

54. 1929 N. 283 ; 1932 M. 542 ; 1942 S. 60 : (1941) Kar 563, 570.

55. 1954 Punj. 122 ; 1950 Kutch. 27 : 1948 M. 396 ; 1942 S. 60 (evasive conduct ; large mesne profits) ; 1938 L. 10 ; 1938 M. 730 ; 1957 N. 1 ; 1956 T.-C. 205 (co-owner).

56. 6 I. C. 659 ; 1935 M. 402.

57. 18 C. W. N. 533 ; 1929 L. 497 ; 1938 M. 730. For occupation rent see 1920 C. 319 : 58 I. C. 301.



party.<sup>58</sup> Mere dispute as to share or strained relation is no ground for such appointment.<sup>59</sup>

A receiver may be appointed in a partition suit at the instance of the creditors.<sup>60</sup> The plaintiff may have a receiver in a partition suit though he has sued for probate and may have an administrator under s. 247 of the Succession Act : The choice rests with him.<sup>60a</sup>

**Partnership suit.**—See p. 115. The basis of a partnership being the mutual trust or confidence reposed in each other by its parties, the Court will seldom interfere in its affairs. But in a suit between partners, if the partnership is already dissolved the Court usually appoints a receiver almost as a matter of course for winding up of business.<sup>61</sup> If it is still subsisting, no receiver will be appointed except on some special grounds, *e.g.*, fraud or gross misconduct. Where, however, a dissolution is inevitable and partners are on bad terms, the Court will appoint a receiver and order the good-will and stock-in-trade to be sold, the partners being at liberty to bid : An order appointing a receiver for proper management of such business is wrong.<sup>62</sup> As to where dissolution is finally decreed, but receivership not determined see **62a**.

In a suit between partners and non-partners, *e.g.*, legal representatives of a deceased partner a receiver will not be granted at the instance of the latter unless special grounds be made out. But the appointment of a receiver if sought by a partner against such legal representatives is a matter of course or if the suit is between the legal representatives of the partners all dead. On the death of a co-partner the Court need not appoint a receiver in every case.<sup>63</sup>

**Against trustees.**—See pp. 22, 123. The Court can appoint a receiver in a scheme suit under s. 92 of the Code,<sup>64</sup> or under s. 73(2) of Bengal Wakf Act.<sup>65</sup> But Courts are generally averse to the displacement of a trustee <sup>66</sup> and person occupying fiduciary relation except in cases of gross misconduct. A

58. 1948 P. 195.  
59. 1923 L. 48 ; 1927 R. 179.  
60. 1929 N. 283 : 119 I. C. 687.  
60a. 1951 N. L. J. 133 : 1962 N. 253 : (1951) N. 178.  
61. 1953 Assam 25. Cf. 1953 Ajm. 16.  
62. 1934 C. 444 ; 148 I. C. 459 ; 1958 Jab. L. J. 118. For denial of partnership see Pak. L. D. 1955 S. 21, Pak. L. D. 1956 S. 85.

62a. 1960 B 424 : (1959) B. 307.  
63. 1920 L. 125 : 55 I. C. 50. 1962 M. 458.  
64. 20 M. L. J. 638 : 7 I. C. 900 ; 1923 M. 224 ; 1925 M. 820 ; 1920 P. 175 : 55 I. C. 442 ; 1959 B. 275.  
65. 1937 C. 740 : 173 I. C. 921. See also 1937 B. 124 ; 1944 C. 157 (shebait removed).  
66. 30 C. L. J. 231, 29 M. L. J. 209.



receiver may be appointed of temple properties for paying off legitimate debts.<sup>67</sup>

**Against executor.**—Likewise very strong reasons are necessary to appoint a receiver against an executor in possession enjoying the testator's confidence.<sup>68</sup> But an executor under a Mahomedan will is not entitled to the same degree of protection.<sup>69</sup> See pp. 126-129.

**Against administrator.**—The case of an administrator who takes his grant from the Court is somewhat different from that of an executor who is fixed upon by the testator himself. See p. 129. Position of an administrator is similar to that of a receiver. So the court should refuse a receiver. Choice rests with a party.<sup>69a</sup>

**Against guardian.**—Appointment of a receiver for protection of the property of a minor or lunatic rests upon the general doctrine of trust discussed above. See pp. 129-131.

**Against life-tenant.**—See p. 114. A receiver may be appointed to protect the estate in favour of the reversioner or remainder-man.<sup>70</sup>

**Against lessee.**—See p. 137. A receiver will not be appointed against a tenant in possession unless the plaintiff shows a clear *prima facie* right.

**Mortgage suit.**—See p. 141. As in other suits the test here is whether it will be *just and convenient* to appoint a receiver.<sup>71</sup> There is no hard and fast rule. It cannot be contended that a receiver should normally be appointed when interest is in arrears.<sup>72</sup> Heavy arrears or insufficiency of security may be a factor in deciding the question.<sup>73</sup> Rents and profits realised

67. 31 C. W. N. 1021 P. C.

68. 1928 C. 256 : 55 C. 249 ; 1934 R. 153 ; 1933 B. 342 : 146 I. C. 621.

69. 19 B. 83 ; 1927 R. 135.

69a. 1953 T.-C. 228 ; 1953 P. 202 ; 1952 N. 253. Cf. (1958) 2 Andhra W. R. 149.

70. 18 C. W. N. 537 (gross mismanagement by Hindu widow) ; 44 M. 984 ; 1933A 138 ; 1930 B. 545 ; 44 B. 727 (anxiety to transfer to a stranger). Cf. 1955 T. C. 134.

71. 35 C. W. N. 1141 ; 1938 C. 93 (English mortgage) ; 1955 Ajmer 53 (possessory mortgage) ; 1934 B. 54 ; 1936 R. 296 S. B. ; 1937 R. 399 (equitable mortgage) ; 1939 R. 321

F. B. ; 16 L. 366 ; 1940 L. 325 ; 1942 N. 1 (sale prevented) ; 1945 P. 404 ; 1949P. 24 (after final decree) ; 1947 A. 157 (after Allahabad amendment) ; 1952 M-B. 136 ; 52 M. 979 ; 56 M. 915 ; 1938 M. 325 ; 1952 P. 231 (simple mortgage : exceptional circumstances) ; 1954 Mys. 162 (security insufficient due to prior mortgage) ; 1960 M. 195 ; (1961) 2 M. L. J. 398 F. B. (after preliminary decree).

72. 1955 M-B. 40 ; 1962 Raj. 225. But see 1936 R. 296 S. B. : 163 I. C. 856.

73. 47 C. 418 ; 1939 R. 321 F. B. ; 1956 Ajm. 51 ; 1956 M-B. 44 ; 1957 Jab. L. J. 401 ; 1961 Raj. 179.



by the receiver must be treated as additional security.<sup>74</sup> It is not just and convenient to appoint a receiver of the portion sold, if the portion in the mortgagor's possession over which a receiver is appointed is sufficient to cover the debt.<sup>74a</sup> A mortgage suit is considered as pending till the money is realised.<sup>75</sup> So a receiver may be appointed pending an application to set aside the mortgage sale.<sup>76</sup> And a receiver can be appointed for protection of the property after a decree for sale.<sup>77</sup> It has been held that if a receiver has been appointed in insolvency proceedings, a receiver should not be appointed in the mortgage suit.<sup>78</sup> Appointment of a receiver is no bar to the sale of equity of redemption.<sup>79</sup>

If the mortgage is void *ab initio* and a simple money decree is passed, the Rangoon High Court has held that the mortgagee cannot get a receiver appointed of the properties of the mortgagor.<sup>80</sup> A mortgagee must give up possession to the receiver even if he has been in possession under an arrangement.<sup>81</sup>

**Suits upon other charges.**—As to maintenance see p. 156. Maintenance is not necessarily a charge : 1955 M. 571. An application for a receiver was rightly made in execution against the house charged with it to pay off arrears and insure punctual payment in future.<sup>82</sup> A receiver may be appointed in enforcement of a vendor's or vendee's lien or in a suit for dower, annuity, rent etc., whether charged or not. See 'suit for money' below. But a receiver should not be appointed of a pledged property in the possession of a third party, particularly if it is a going concern.<sup>83</sup>

A loan may be raised by a receiver on first charge (in supersession even of other secured creditors or incumbrancers) under the Court's order in an appropriate case :<sup>84</sup> Though no provision is made in the C. P. Code, the original side of the Presidency High Courts has a discretion to grant a charging

74. 47 C. 418 ; 54 M. 565 : 1935 M. 410 ; 1932 S. 82 ; 14 R. 292 ; 12 R. 437. But see 1935 M. 146 ; 1940 M. 703 ; 1954 M. 197.

74a. 1955 M-B. (N. U. C.) 3020.

75. 1926 C. 978 ; 1006 ; 1949 P. 24 ; 1942 N. 1 : 198 I. C. 807.

76. 15 C. W. N. 672.

77. 1935 O. 497 : 11 Luck. 562.

78. 1936 P. 357 : 163 I. C. 811.

79. 1942 P. W. N. 55, 58.

80. 1930 R. 271. Contra. 13 W. R. 453, 454.

81. 1921 P. 43 : 6 P. L. J. 37 ; 1955 Ajmer 53.

82. 1933 L. 826. See also 1933 N. 266.

83. 1955 M-B. 48 (a hotel).

84. 45 C. W. N. 68.



order *re* property in the hands of a receiver in favour of judgment-creditors in priority over ordinary creditors who have not proceeded to judgment.<sup>85</sup>

**Suit for money.**—O. 40, r. 1 makes no distinction between secured and unsecured creditors. This Order and the two Orders just preceding are designed to secure the plaintiff against the defendant's attempt to defeat the execution of the decree. A receiver can be appointed not only of the property in suit but of *any* property.<sup>86</sup> Contrary view (34 C.W.N. 440 ; 1947 B 434 ; 1953 M-B. 85) can hardly be supported. See 'Debtor and creditor' p. 138 etc. If there be a money decree against mutwalli personally, a receiver may be appointed of the wakf property to collect his annuity.<sup>87</sup>

**Suit for specific performance.**—See p. 136 etc. A receiver may be appointed in such a suit on a contract for sale, lease or mortgage.<sup>88</sup> The view in this case that the Court has no power to appoint a receiver in a suit to enforce a covenant for execution of a mortgage is questionable.<sup>89</sup>

**"The Court may".**—Appointment of a receiver, even though on the application of a party, is an act of the Court : p. 8. It is not mandatory but discretionary : s. 44 of Specific Relief Act. And it is not an equitable right but an equitable remedy,<sup>90</sup> a form of specific relief (§ 2), a provisional or auxiliary one, invoked as an adjunct or aid to the principal relief : p. 95. As to discretion (sound and not arbitrary) see § 5 and notes on "Just and convenient" above. For jurisdiction see § 4. Receiver can be appointed before deciding the question of jurisdiction.<sup>90a</sup>

**"By order".**—The rule is silent as to any notice to the opposite party.<sup>91</sup> So this interlocutory order may be *ex parte*, *i.e.*, without notice in emergent cases.<sup>92</sup> See p. 55. It is appealable and also always liable to modification by the Court itself.<sup>93</sup> For different kinds of jurisdiction see § 4, p. 16. As to enforcement of the order see § 6, p. 34. For appeal see p. 156.

85. 54 B. 667 : 1930 B. 451 ; 45 C. W. N. 1104.

86. 1935 R. 398 : 159 I. C. 816 ; 1 Dac. R. 81 ; 1938 L. 12 (no lien necessary) ; 1955 NUC (cal) 5606 ; 1958 M. 44 (ordinarily attachment before judgment) ; (1955) 5 Raj. 402.

87. 1954 P. 364.

88. 1926 M. 155 : 92 I. C. 599.

89. See also 1947 N. 26, 29.

90. Clark's Receivers, § 36.

90a. 1925 R. 287 ; 1959 B. 275 (obiter). But see 1952 Ajm. 62.

91. 1923 L. 239 : 71 I. C. 743 (object may be nullified by notice).

92. 43 C. 986 : 20 C. W. N. 1009.

93. 5 D. L. R. (Pat.) 161.



**Cl. (a): "Appoint".**—includes 'suspend' or 'dismiss'.<sup>94</sup> See General Clauses Act, 1897, s. 16. Removal or discharge of receivers is implicit: § 30, p. 256. So refusal to remove is also appealable under O. 43, r. 1(s).<sup>94a</sup> Appointment is confined to pendency of suit generally.<sup>95</sup> The receiver should not be continued in appeal.<sup>96</sup> After decision of trial Court the property is not *in medio*.<sup>97</sup> An appointment, unless for a limited time, continues till formal order of discharge.<sup>98</sup> A receiver appointed by the appellate Court is deemed appointed by the trial Court to which application for discharge should be made.<sup>99</sup> A receiver may be appointed in place of one gone out.<sup>1</sup> Form of appointment: See No. 9, App. F of C. P. Code.

**Who may be appointed.**—See § 7, p. 38. Absolute disinterestedness being indispensable<sup>2</sup> a party should not be appointed a receiver except under special circumstances<sup>3</sup> or with the consent of the other party.<sup>4</sup> In partition and partnership suits a party is more readily appointed.<sup>5</sup> See p. 1. A partner should not be appointed when a *prima facie* case of dishonesty is made against him.<sup>6</sup> A limited Company should not be a receiver.<sup>7</sup> Wishes of the creditors are entitled to a great weight as they have virtually the right of nomination.<sup>8</sup> As to selection and security the Court has unfettered discretion.<sup>9</sup>

**"Receiver".**—For definition and nature of his office see § 1. Shortly speaking, he is not an agent, trustee or representative of a party but a ministerial officer ("hand") of the Court.<sup>10</sup> His functions, executive and not judicial, <sup>11</sup> are to obey the orders of the Court and manage the estate which in his hands is in *custodia legis* ultimately for the benefit of the true owner.<sup>12</sup> He has no proprietary rights or interests in the estate.<sup>13</sup> So after

94. 1950 F. C. 140.  
94a. 1955 C. (N U C) 2915; 1955 T-C. 163 (1947 P. 418, 1952 T-C. 248 are not good law); 1961 Ker. 75.  
95. 1944 N. 82: 212 I. C. 289.  
96. 1944 O. 225: 216 I. C. 244.  
97. 1939 O. 229; 183 I. C. 16.  
98. 1945 S. 75; 222 I. C. 288.  
99. 1953 P. 253.  
1. 1945 P. 467, 469: 24 P. 457.  
2. 53 C. 319; 1941 C. 144.  
3. 1915 M. 336 (small estate); 1929 L. 780 (no absolute prohibition).  
4. 1934 C. 444: 148 I. C. 459.  
5. 3 P. 964; 1956 T-C. 205.

6. 1934 C. 444. But see 1942 R. 12: 198 I. C. 621.  
7. 1942 N. 64. But see 1942 R. 12: 198 I. C. 621; 1960 Ker. 57.  
8. 1929 P. 114: 115 I. C. 881.  
9. 1952 M-B. 136. Cf. 1955 Bhopal 14.  
10. 1942 C. 483; 1945 C. 357: (1946) 1 C. 45; 9 Dac. L. R. 23.  
11. 1940 R. 151; 1929 B. 478.  
12. 1946 C. 357; 1952 T-C. 64.  
13. 1945 C. 387, 397. As to nature of possession see 1955 M. 252; 1960 Ker 212. Estate is not represented by him alone: 1958 Ker. 243.



his appointment mortgage of the property by the owner is not invalid,<sup>14</sup> and there is no bar to the sale of the equity of redemption.<sup>15</sup>

The following legal consequences from the receiver being an officer of the Court should be noted :

**(i) Suit by or against receiver.**—*See* § 17. A receiver must sue or be sued with the leave of the Court.<sup>16</sup> A suit against him without the leave is contempt of the Court.<sup>17</sup> There is no statutory provision which requires a party to take the leave to sue him. The rule has come down as a part of the rules of equity, based on public policy that a plaintiff should absolve himself from the charge of contempt of Court by a suit designed to disturb its possession. The grant of such leave is in the exercise of the inherent power which every Court possesses to prevent acts akin to an abuse of its authority.<sup>18</sup> A Court, if satisfied, will readily grant the leave.<sup>19</sup>

Omission to obtain the leave of the Court prior to the institution of the suit may be rectified by its sanction granted subsequently.<sup>20</sup> It is open to the Court to stay proceedings for a reasonable time so as to enable a party to apply for the leave.<sup>21</sup> No leave is necessary to sue a receiver who has been discharged and is no longer an officer of the Court.<sup>22</sup> Fresh leave is needed in execution.<sup>23</sup>

The Court has no jurisdiction to issue an injunction restraining the receiver from dealing with the property; nor can the plaintiff enforce his decree in execution. He should apply to the appointing Court to direct the receiver to act according to the decree.<sup>24</sup> No criminal proceeding without sanction of the appointing court.<sup>24a</sup>

**(ii) Notice under s. 80.**—A receiver being a Public Officer cannot be sued without a notice under s. 80 of the C. P. Code. The necessity of such notice is not dispensed with by the leave of the Court.<sup>25</sup> A suit for declaration of title to the property is not a suit "against" him within the meaning of s. 80 and so no such notice is necessary.<sup>26</sup>

**(iii) Attachment of property in the hands of receiver.**—*See* § 16. Such property is exempt from judicial process as a rule. Possession of the Court is not to be interfered with without its leave.<sup>27</sup> Leave of the Court is necessary even for a mortgage-sale, though no attachment is

14. 45 C. W. N. 68 ; 52 P. L. R. 304.  
15. 1942 P. W. N. 55, 58.  
16. 1944 A. 220 ; 6 R. 268 ; 1936 S. 132 ; 1938 P. 487 ; (1955) 2 C. 55 (no cause of action vests in him).  
17. 18 C. W. N. 546 ; 45 B. 99.  
18. 4 P. L. J. 20 ; 1937 P. 523.  
19. 41 C. W. N. 1342 ; 3 P. 357.  
20. 23 C. W. N. 496 ; 46 C. 352 ; 1926 C. 1040 ; 1949 Bur. L. R. (S. C.) 160, 166 ; 44 B. 903 ; 43 M. 793 ; 59 I. C. 568 ; (1955) 2 C. 55 ; 1963 Mys. 19.

21. 15 C. W. N. 54 ; 872 ; 925.  
22. 1931 P. 298 ; 10 P. 379 ; 1959 C. 71.  
23. 1953 C. 797 ; 1953 A. 717.  
24. 1928 P. 321 ; 7 P. 684.  
24a. 46 C. 432. But see 1948 M. 318.  
25. 35 C. W. N. 161 ; 58 C. 850.  
26. 1940 C. 1, 5 ; 1942 C. 394 ; 41 C. W. N. 322 ; 53 C. W. N. 713 ; 1948 C. 174. See p. 3.  
27. 14 C. W. N. 560 ; 1925 M. 51 ; 1945 M. 13 ; 1936 P. 572 ; 1958 S. C. 725 (revenue sale) ; 1958 Punj. 471.



required in such a case.<sup>28</sup> A sale without the Court's leave is not void but voidable only at the instance of an interested person,<sup>29</sup> if actually prejudiced.<sup>30</sup> But until and unless the receiver takes possession of the property, and his appointment is perfect, a decree-holder can execute his decree against it without the leave of the Court.<sup>31</sup> The Court which appointed the receiver is the proper Court to grant the leave.<sup>32</sup>

(iv) **No legal representative of receiver.**—See (1958) 2 M.L.J. 429.

The terms 'receiver' and 'manager' are analogous.<sup>33</sup> A receiver under O. 40, r. 1 has a legal position different from that of the Official Trustee or the Administrator-General; these officers having an estate in the properties, a suit in respect of the same would be a suit against them in the legal sense.<sup>34</sup> A sapurdar to whom movable property attached in execution is handed over for safe custody is not a receiver.<sup>35</sup>

Appointment of a receiver like issue of injunction is a form of specific relief on the principle of *quta timet* (fear of possible injury).<sup>36</sup> It is not intended to penalise.<sup>37</sup> See pp. 9-12. The Court can cancel the order of appointment at any time<sup>38</sup> and also discharge or remove the receiver appointed by it.<sup>39</sup> But the authority of the receiver continues even after the order of discharge till he performs all the acts.<sup>40</sup> For 'Removal and Discharge of Receiver' see Chapter VI.

**Two or more receivers.**—As a rule if a receiver has been appointed, another receiver should not be appointed of the same property in a subsequent case.<sup>41</sup> See p. 71. Appointment of a receiver in a mortgage suit after appointment of one in insolvency proceedings is not just.<sup>42</sup> Where a Probate Court already appointed an administrator, another Court should refuse to appoint a receiver to perform the same duties,<sup>43</sup> for position of an administrator under s. 247 of the Succession Act, 1925 is

28. 1944 M. 372; 1935 M. 624.  
Contra 26 C. 127; 3 C. W. N. 90.

29. 1945 M. 13; (1954) 2 M. L. J. 86; 1958 S. C. 725 (obiter); 1963 M. 33; 1963 M. 156 F. B.

30. 40 C. L. J. 78; 84 I. C. 471.

31. 45 C. W. N. 1104; 1943 P. 297;  
41 C. W. N. 1074.

32. 1929 L. 147; 1943 B. 273; 1943 P. 297; 45 C. W. N. 1104.

33. 1932 C. 275; 59 C. 961.

34. 44 C. W. N. 74, 79; 1941 C. 1

35. 1924 L. 667; 75 I. C. 731.

36. 1949 A. 112, 115.

37. *Ibid*; 1945 P. 404; 1939 R. 321 F. B. (*per* Braund, J.).

38. 1945 C. 183; 48 C. W. N. 183.

39. 1945 A. 371; 53 C. 319 (partiality); 1929 P. 114.

40. 1942 C. 394; 46 C. W. N. 355.

41. 42 C. W. N. 33; 3 P. 357; 1933 L. 671. Cf. 16 C. W. N. 126, 45 C. W. N. 1104.

42. 1936 P. 357; 163 I. C. 811.

43. 1953 P. 202.



similar to that of a receiver.<sup>44</sup> This principle of avoiding conflict of jurisdiction has been kept in view in s. 146(2) of the Cr. P. Code as amended in 1923. It runs thus :

*"When the Magistrate attaches the subject of dispute, he may, if he thinks fit and if no receiver of the property, the subject of dispute, has been appointed by any Civil Court, appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure.*

*Provided that, in the event of a receiver of the property, the subject of dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate who shall thereupon be discharged".*

The portions in italics were added by the amendment. The present law is that a receiver having been appointed by a Civil Court, the Magistrate cannot appoint another ; but a receiver appointed by a Magistrate shall quit possession in favour of the receiver subsequently appointed by a Civil Court and then be discharged. In short, the Civil Court receiver always prevails. The view that a Civil Court cannot absolutely appoint a receiver against one already appointed by the Magistrate<sup>45</sup> is no longer law.

**Joint receiver.**—Two or more receivers may, however, be appointed joint receivers of the same property,<sup>46</sup> or of different portion of it.<sup>47</sup> See pp. 42, 54, 71.

**"Of any property".**—*i.e.*, movable or immovable, tangible or intangible (*e.g.*, good-will, copy-right, patent and design),<sup>48</sup> vested or contingent.<sup>49</sup> It may not be the subject of suit,<sup>50</sup> nor attached,<sup>51</sup> attachable and saleable,<sup>52</sup> nor within local jurisdiction of the Court.<sup>53</sup> There can be no receiver *re* property of third parties.<sup>53a</sup> Upon a decree for possession of premises the receiver could carry on business in another premises.<sup>53b</sup>

**Future earnings.**—A Court may now appoint a receiver of of future maintenance.<sup>54</sup> This seems to be supported by Privy

44. 1953 T-C. 228 ; 1952 N. 253.

45. See 40 C. 862 : 17 C. W. N. 1070 : 20 I. C. 269.

46. 20 C. W. N. 789 ; 1948 P. 195 ; 1950 P. 241.

47. 36 A. 19 : 1914 A. 4.

48. See Copyright Act 3 of 1914 ; S. 26 of Patents and Designs Act 2 of 1911 ; 74 P. W. R. 1915 : 29 I. C. 904 : 148 P. L. R. 1915.

49. 1941 C. 579 ; 197 I. C. 437.

50. 1935 R. 398 : 159 I. C. 816 : 1 D. R. 81.

51. 1942 M. 396 : 203 I. C. 529.

52. 1933 N. 266 ; 1942 O. 410 ; 1943 Pesh. 52.

53. 40 C. W. N. 1065 ; 34 C. W. N. 238 : 1930 C. 502 ; 1961 C. 422.

53a. (1958) 1 M. L. J. 94.

53b. (1956) 1 C. 171 (He could be added party to the execution).

54. 49 M. 567 ; 1942 O. 410. Contra. 40 M. 302 ; 57 B. 507.



Council decisions.<sup>55</sup> There may also be a receiver of assignable pension. A receiver may be appointed over the daily earnings (collected) of a theatre.<sup>56</sup> The view that future earnings cannot be proceeded against at law or in equity<sup>57</sup> does not seem to apply in this country. A receiver may be appointed of a contingent debt.<sup>58</sup> See equitable execution under s. 51(d). *Vide* also the following cases.<sup>59</sup> Appointment of receiver for crops etc. does not amount to eviction of tenants in actual possession.<sup>59a</sup>

**Company property.**—A Court can appoint a receiver of the property of a Company.<sup>60</sup> A receiver of its property and a manager of its business may be appointed in debenture-holders' action where there is a floating security on the whole of the Company's property, present and future, if the security is in jeopardy, (*e.g.*, when there is a pending winding-up petition) though it has not yet crystallised by the debt having become actually due.<sup>61</sup> On the appointment the floating security crystallises and becomes a fixed security.<sup>62</sup>

A Bank being appointed receiver put all realisations into a current account with itself under directions of the Court. *Held*, the money did not become the assets of the Bank.<sup>63</sup> A receiver shall not be appointed of assets in the hand of an Official liquidator : s. 175(6) of Indian Companies Act.

No receiver can be appointed in a conflict as regards public offices :<sup>64</sup> except over fees or emoluments thereof.<sup>65</sup>

**"Whether before or after decree."**—This was also held to be the law under the old Codes.<sup>66</sup> A receiver may be appointed over any property at any time.<sup>67</sup> But pendency of litigation (whether by way of suit, appeal or execution) is essential.<sup>68</sup>

55. See 52 I. A. 262 : 30 C. W. N. 818 ; 54 I. A. 228 : 31 C. W. N. 1021 ; 58 I. A. 215 : 35 C. W. N. 791 : 1931 P. C. 160.

56. 1936 L. 239 : 162 I. C. 661.

57. (1893) 1 Q. B. D. 551.

58. 1941 C. 579 ; 197 I. C. 437.

59. 1950 C. 212 (Provident Fund) ; 31 C. W. N. 1021 P. C. (trust property) ; 37 C. L. J. 41 (impartible estate) ; 38 C. W. N. 844 (to accept award in Land Acquisition Cases).

59a. 1958 Ker. 250 ; 303 ; (1958) 2 M. L. J. 216.

60. 1946 L. 193 ; 1949 A. 112 ; 1950 M. 116 ; 1956 Mys. 32 dissenting from 52 C. 513).

61. (1897) 1 Ch. 158 ; Clark on Receivers § 154.

62. Stiebel's Company Law p. 565.

63. 46 C. W. N. 910.

64. High on Receivers § 21.

65. 3 C. L. R. 453.

66. See 8 M. 229, 233.

67. 1952 Ker. L. T. 308 ; 7 M. L. T. 86 : 5 I. C. 758 (after sale, before confirmation).



See p. 16. There is no bar to an appointment after reference to arbitration unless it included also the question of *interim* management.<sup>69</sup> A mortgage suit is regarded as pending till money is realised. See 'mortgage suit' above. A receiver may be appointed even after the grant of leave to appeal to the Supreme Court.<sup>70</sup> But there can be no appointment of a receiver after dismissal<sup>71</sup> or compromise<sup>72</sup> of a suit. If a receiver is appointed by the High Court pending appeal before it, the lower Courts cannot appoint a receiver.<sup>73</sup> This is because all matters connected with the suit are transferred to and placed under the control of the Appellate Court, the power of the inferior Court being in every way in abeyance except to execute the decree.<sup>74</sup>

Direction to continue receiver in a final judgment is permissible only in exceptional cases.<sup>75</sup> A permanent receiver may be appointed in a suit for rendition of accounts.<sup>76</sup> The Court can cancel an appointment at any time.<sup>77</sup> Until otherwise ordered, the receiver continues in office though the suit has ended but the purpose of appointment has not been achieved.<sup>78</sup> Authority of the receiver continues even after the order of discharge till he performs all the acts.<sup>79</sup> A consent order of appointment does not prevent the consenter from challenging administration thereunder which is of such a character as to amount to malfeasance or to be so protracted and imperfect as to be futile.<sup>80</sup> If any property in the receiver's possession is sold away, he cannot be allowed to continue in possession.<sup>81</sup> For 'duration of receivership see p. 53. Also recent case 1962 S. C. 21.

**Receiver in execution.**—Appointment of a receiver in execution is a form or mode of it.<sup>82</sup> See s. 51 (d) and O. 21, r. 11 (2) (j) (iv). It is an exceptional remedy derived from English practice.<sup>83</sup> Ordinarily known as *equitable execution* it

68. 1937 M. 163 ; 1950 P. 184.  
Contra 1945 A. 261 F. B.

69. 55 C. 249 ; 1925 S. 102.

70. 4 Bur. L. T. 241 : 12 I. C. 198 ;  
1962 M. P. 380 (after preliminary  
decree).

71. 14 W. R. 384.

72. 5 P. L. J. 513 : 58 I. C. 405.

73. 4 M. L. T. 268.

74. 27 M. 602 : 14 M. L. J. 321.

75. 1943 N. L. J. 571.

76. 1949 A. 112.

77. 1945 C. 183 : 48 C. W. N. 183.

78. 1930 M. 67 ; 1945 S. 75 ; 1962 A.  
610.

79. 1942 C. 394 : 46 C. W. N. 355.

80. 1924 P. C. 202 : 29 C. W. N.  
413, 419 : 47 M. L. J. 286.

81. 1915 M. 924 : 28 I. C. 551.

82. 45 C. W. N. 1104, 1108 ; 1924 N.  
165 : 78 I. C. 1031 ; (1955) I. C. 122  
(though tenure in arrears is avail-  
able for sale).

83. 1927 A. 419 : 100 I. C. 735 ; 45  
C. W. N. 1104, 1108 ; 1940 L. 345, 348 :  
191 I. C. 704 followed in 1955 Ajmer  
58 (J. D.'s property sufficient : no R.)



is entirely within the discretion of the Court being subject to O. 40, r. 1 and so cannot be claimed as a matter of right or of course.<sup>84</sup> A proper case must be made out that it is *just and convenient*,<sup>85</sup> that ordinary execution cannot be effected with advantage.<sup>86</sup> Legal execution need not always be exhausted before this equitable execution can be made.<sup>87</sup> Appointment of receiver without prior attachment is not invalid, itself being a form of attachment.<sup>88</sup> But such appointment does not make a mortgage by the judgment-debtor void.<sup>89</sup> (Court may order J-D to remain in possession and hand over realised money to R.).

As to appointment of a receiver *re* properties not liable to attachment or sale in execution there is difference of opinion.<sup>90</sup> It seems to follow from the Privy Council cases in 30 C.W.N. 818, 35 C.W.N. 791 that such appointment is permissible. See also notes on 'Of any property' above. S. 51 shows that even when any property is not attachable a receiver may be appointed.<sup>91</sup> A dwelling-house (if not attachable) being let out to tenants, a receiver may be appointed.<sup>92</sup> As to receiver in execution over Provident Fund, see 54 C.W.N. 251. Cf. 85 C.L.J. 112, 115.

A receiver may be appointed even in execution of a money decree<sup>93</sup> to realise attached debt or decree,<sup>94</sup> rents of attached property<sup>95</sup> etc. if realisation may be made within a reasonable time.<sup>96</sup> If a receiver has been appointed at the instance of one decree-holder, every other decree-holder need not have a receiver over the same property in his own case.<sup>97</sup> Appointment of a receiver in execution does not necessarily operate as its stay.<sup>98</sup> It has been held that under s. 51 the judgment-debtor has no right to apply for a receiver.<sup>99</sup> Under s. 51 (d)

84. 1939 O. 116 118 ; 35 C. W. N. 1066 ; 1936 L. 239 ; 1937 A. 389 : 169 I. C. 181 ; 1953 C. 610.

85. 1937 L. 738 ; 1942 O. 205 ; 1943 Pesh 52.

86. 34 C. W. N. 238, 241 : 35 C. W. N. 1066 ; 42 C. W. N. 266 ; 1942 P. 455.

87. 1949 C. 63. Cf. 1952 T. C. 308.

88. 1942 M. 396 : 203 I. C. 529.

89. 1951 E-P. 277.

90. See 16 C. W. 402 ; 1943 Pesh 52 ; 1950 O. 220 ; 1938 L. 458. Contra. 1929 P. 700 F. B ; 1942 P. 52 ; 1937 A. 389 : 169 I. C. 181.

91. 1942 O. 410 : 201 I. C. 100, 1955 Ajm. 61.

92. 1937 L. 433 : 175 I. C. 447.

93. 1940 L. 325 ; Pak. L. D. 1949 L. 60.

94. 11 B. 448 ; 30 A. 393.

95. 1925 R. 318 : 89 I. C. 794.

96. 35 C. W. N. 1066 (to the benefit of both the decree-holder and the judgment-debtor) ; 1937 L. 433 : (1937) L. 486.

97. 1930 M. 4.

98. 6 P. L. J. 198 : 62 I. C. 469.

99. 1922 P. 369 : 67 I. C. 606.



and O. 40 the Court can act *suo motu*.<sup>1</sup> A stranger cannot apply under s. 51 though a benefit is given him by the decree.<sup>2</sup>

**Cl. (b).**—It refers to a party or a stranger but not a receiver.<sup>3</sup> Sub-rule (2) qualifies it, for the benefit of a stranger.<sup>4</sup> Court refusing to direct receiver not to interfere with a third party's possession in effect removes him.<sup>4a</sup> Party in possession under an arrangement by the receiver can be removed on expiry of the term.<sup>4b</sup>

**Cl. (c).**—Clearly enough cl. (b) cannot refer to the removal of a receiver which falls under cl. (a) above.<sup>5</sup> A receiver comes in only on the removal of a party or a stranger under cl. (b). Appointment of a party in possession deprives him of possession by transferring it to the Court.<sup>6</sup>

**Cl. (d) :—Empowering the receiver.**—See § 28, p. 187. A receiver has no powers except those conferred expressly or impliedly by the Court.<sup>7</sup> There is no presumption that all the powers of cl. (d) are conferred on him.<sup>8</sup> He cannot deal with the property in any way without the consent of the Court.<sup>9</sup> Given all the powers of cl. (d) he has impliedly a discretionary power of sale.<sup>10</sup> But empowered only to collect outstandings and to do all necessary things for the realisation and preservation of the assets of a firm he has no power to mortgage its property.<sup>11</sup> Mortgage executed by a receiver under Court's order (within jurisdiction) sanctioning loan on first charge gets precedence on earlier incumbrances.<sup>12</sup> A receiver unless empowered cannot bind the estate by a lease. For breach of contract of lease the lessee must sue the receiver personally.<sup>13</sup> Even if full powers are conferred on a receiver he should take the Court's directions in all important matters to be on the safe side.<sup>14</sup> An acknowledgment by the receiver cannot save limitation under s. 19 of the

1. 1925 R. 318 : 89 I. C. 794 (to collect rent in money execution).

2. 1917 O. 182 : 37 I. C. 133 (compromise decree for allowances).

3. 53 C. 319 : 92 I. C. 940 : 1926 C. 593 ; 1924 M. 614 : 78 I. C. 625.

4. 1952 M-B. 136.

4a. 1958 Ker. L. J. 302.

4b. 1962 S. C. 21 ; 1963 Or. 142.

5. 53 C. 319 approved in 1950 F. C. 140.

6. 1955 M. 252.

7. 1925 M. 318 : 82 I. C. 793 ; 1960 B. 424.

8. 1926 M. 357 : 93 I. C., 271 ; 1951

Low Bur 139 : 30 I. C. 678. Contra. 1924 N. 136 : 78 I. C. 811.

9. 1928 C. 402 : 107 I. C. 738 ; 1929 C. 828 : 50 C. L. J. 333 (lease of debutter) ; 1963 M. 33 (Sale only voidable).

10. 1924 P. C. 202 : 29 C. W. N. 413 : 81 I. C. 576 : 22 A. L. J. 968.

11. 1923 P. C. 50 : 28 C. W. N. 1 : 50 I. A. 77 : 71 I. C. 650.

12. 45 C. W. N. 68 ; 11 C. W. N. 1 : 34 C. 427 : 4 C. L. J. 495.

13. 1939 R. 12 : 180 I. C. 819.

14. 14 C. L. J. 445 ; 48 B. 200 ; 1940 P. 516 ; 1960 Raj. 192.



Limitation Act.<sup>15</sup> See further in Rustomji's Limitation, 5th ed., p. 437. Specific orders are necessary under cls. (b), (c), (d) : 1923 N. 6.

Though the primary duty of a receiver is to pay the head-rent out of the sub-rents, by Court's order the head-rent may be postponed to reimbursement by the receiver of himself *re* sums raised or advanced by him for other purposes.<sup>16</sup> Creditors may proceed both against the estate and the receiver personally unless his personal liability is expressly excluded by the terms of the loan.<sup>17</sup> A receiver advancing money without sanction of the Court can only look to the estate for indemnity and cannot get personal order for payment.<sup>18</sup> A receiver would be personally liable for breach of contract for which Court's sanction was not obtained.<sup>19</sup> For priority of debt to the State see (1961) 2 M.L.J. 398 F.B. 1961 Punj. 292, 1962 M. 59 F.B.

Right to sue is not necessarily incidental to the general powers of a receiver.<sup>20</sup> It rests solely on the Court's order : 7 C.W.N. 651. There may be a ratifying order.<sup>20a</sup> A receiver may be authorised to sue in his own name expressly<sup>21</sup> or impliedly.<sup>22</sup> A receiver so empowered is the only person competent to sue ; so the landlord cannot sue for rent.<sup>23</sup> Though no property vests in him, he may be entitled to sue for possession.<sup>24</sup> He may sue for debts due to the estate without succession certificate.<sup>25</sup> A receiver in execution becomes *functus officio* after the sale and grant of sale certificate ; so the auction-purchaser alone can sue for possession.<sup>26</sup> The mere fact that the receiver is empowered to defend suits does not dispense with the necessity of impleading the owner as defendant in a suit for possession.<sup>27</sup> 'Owner' refers to the partnership itself and not to a partner.<sup>27a</sup>

**Appeal.**—Conferment of powers under cl. (d) implies that the receiver is left within the discretion to decide himself whether he would exercise them in a particular set of circumstances. But where the Court merely passes an order or gives a direction

15. 10 C. W. N. 959 ; 29 I. C. 27 (L. Bur). Contra. 48 I. C. 179 : 35 M. L. J. 571. Cf. 1960 B. 424.

16. 1943 P. C. 185 : 48 C. W. N. 275 : 209 I. C. 553 : 66 C. W. N. 747.

17. 1925 P. 602 : 89 I. C. 32.

18. 1936 M. 321 : 163 I. C. 968.

19. 58 C. 174 : 1931 C. 491.

20. 17 I. C. 751 : 1913 P. R. 56.

20a. 1963 Mys. 19.

21. 1937 B. 244 ; 1953 C. 385 ; 2 C.

W. N. 469 : 25 C. 642.

22. 49 C. L. J. 70 : 55 C. 1216.

23. 15 C. L. J. 339 : 11 I. C. 102.

24. 19 C.W. N. 45 : 27 I. C. 459 ; 1937 B. 244 ; 1963 C. 647.

25. 1941 C. 579.

26. 9 R. 565 : 135 I. C. 563.

27. 49 C. W. N. 808. Receiver is not a necessary party when owner is a party : 49 C. W. N. 558.

27a. 1960 B. 424.



which the receiver is bound to comply with, it cannot be said that any power is being conferred on him. So such an order or direction is not appealable.<sup>28</sup> For appeal generally see p. 156.

**Sub-r. (2).**—This is in limitation of sub-r. (1) (b) <sup>29</sup> It applies only to a third party in possession and is no bar to the removal of a party under cl. (b) above.<sup>30</sup> No receiver can be appointed in a guardianship proceeding if a person in possession of the property denies the minor's claim to it.<sup>31</sup> The Court should inquire into a third party's claim before appointing a receiver.<sup>32</sup> As to his right to resist the receiver pending the inquiry there is difference of view.<sup>33</sup> A mortgagee in possession having a decree for sale cannot have possession against the receiver.<sup>34</sup> A receiver<sup>1</sup> has to take possession. He is not deemed in possession merely by furnishing security.<sup>35</sup> An order refusing to direct the receiver to release the property in favour of a third party is not appealable but a suit lies.<sup>36</sup> Only under this sub-rule receiver's possession can be resisted by a third party.<sup>36a</sup> Court can summarily eject a lessee on the expiry of his term.<sup>36b</sup>

**R. 2. The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.**

Remuneration.

**Rangoon Amendment.**—It substitutes the following :—

"2. The fees to be paid as remuneration for the services of the receiver shall be in accordance with the following scale :—

(a) On rents or outstandings recovered or on the proceeds of the sale of movable or immovable property—unless for special reasons to be recorded, the Court orders the remuneration to be at some other rate—five per cent.

(b) For taking charge of money or of movable or immovable property which is not sold, unless for special reasons it is otherwise ordered by the Court, on the estimated value—one per cent.

(c) For any special work not provided for above, such remuneration as the Court on the application of the receiver shall order to be paid."

28. 1953 Raj 121 dissenting from 17 C. W. N. 16, 1947 P. 5, 1948 M. 452 and relying on 1933 L. 216 : 145 I. C. 200 ; 1960 Raj 192.

29. 1945 C. 298 ; 1945 O. 25 ; 1946 L. 193 ; 1949 A. 112 ; 1935 R. 398.

30. *Ibid* ; 18 C. W. N. 537 ; 1939 B. 54 ; 1942 N. 1 ; 1942 P. 240 ; 1953 Or. 51. See also 1943 A. 1 F. B. (suggesting amendment) and then 1947 A. 157 ; 1955 M-B. 199 ; 1956 Ajmer 51 ; 1960 Andhra 79.

31. 1955 Punj. 137.

32. 34 C. L. J. 123 : 65 I. C. 837.

33. See 18 C. W. N. 289 and 45 I. C. 177 : 1918 P. 364.

34. 1924 P. C. 206 : 29 C. W. N. 420 : 26 Bom. L. R. 1161.

35. 1953 C. 574 : 58 C. W. N. 193.

36. 1941 R. 236 : 196 I. C. 768. See also 1918 P. 364 : 45 I. C. 177 ; Cf. 1958 Ker. L. J. 302.

36a. 1956 P. 233 ; 1955 M-B. 199 ; (1958) 1 M. L. J. 94.

36b. 1961 A. 59.



**Remuneration.**—*See* p. 237. This must have reference to the labour involved and the time taken.<sup>37</sup> The Court has a discretion to allow the receiver either a percentage on the collection or a fixed salary. It has power to reduce salary if he sits idle. And he has no legal right to salary till discharge if, to his knowledge, possession and management be taken away from him.<sup>38</sup>

Remuneration should ordinarily come out of the estate.<sup>39</sup> Order fixing the salary (including its increase or decrease) is not appealable.<sup>40</sup> Total amount of remuneration should not be more than the income realised by the receiver from the estate.<sup>41</sup> Percentage does not include value of the corpus.<sup>42</sup> It is calculated on the actual sale proceeds not including trade discount.<sup>43</sup> As the receiver is entitled to commission on collections he cannot claim it when some securities in deposit with a Bank are converted by the Bank itself into other securities<sup>44</sup> nor when property is sold through an auctioneer without his intervention.<sup>45</sup> But he can charge commission on collections made through a manager.<sup>46</sup> Beyond legitimate remuneration and costs incurred he is not to make any profit.<sup>47</sup> As to lien on the estate for his claim and allowances see p. 239. The receiver of mortgaged property gets priority over the mortgagee for these dues.<sup>48</sup> Possession being not so much of the receiver as of the Court, his lien belongs to the Court and he is only the human agency through which it operates. So long as the Court retains possession, the individuality of the receiver is an irrelevant consideration. The receiver's lien is not therefore lost merely because he has been discharged and another appointed.<sup>49</sup>

A party proposing himself as receiver is to act without salary, unless by consent.<sup>50</sup> A managing partner consenting to act as receiver during dissolution does not forego his right to remuneration as managing partner.<sup>51</sup> Order as to remuneration is not appealable. **51a**

37. 1931 M. 500 : 131 I. C. 655.  
38. 1953 C. 574 : 58 C. W. N. 193.  
39. *Ibid* ; 1953 P. 264.  
40. *Ibid* (dissenting from 1942 N. 64) ; 1930 L. 352 (directing a party to pay it).  
41. 1925 N. 462 : 91 I. C. 54 (under s. 145 of Cr. P. C.).  
42. 1952 C. 52.  
43. 1931 M. 500 : 131 I. C. 655.  
44. 1931 M. 36 : 59 M. L. J. 833.  
45. 1928 R. 301.

46. 1953 C. 672.  
47. 1944 P. W. N. 63 ; 1939 R. 217 : 183 I. C. 868 (secret agreement with J. D., a fraud on Court) ; 1955 Andhra 274.  
48. 1925 M. 571 : 90 I. C. 337 ; 66 C. W. N. 747.  
49. 1954 C. 386 : 92 C. L. J. 287.  
50. 1942 N. 64 ; 1942 R. 12 ; 1948 M. 335.  
51. 1926 C. 380 : 90 I. C. 492.  
51a. (1960) 2 An. W. R. 194.



R. 3. Every receiver so appointed shall— Duties.

(a) *furnish* such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property ;

(b) *submit* his accounts at such periods and in such form as the Court directs ;

(c) pay the *amount* due from him as the Court directs ; and

(d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

**Andhra Amendment.**—Same as that of Madras.

**Kerala Amendment.**—Same as that of Madras ; only in Cl. (a) substitute 'immovable' for 'movable'.

**Madras Amendment.**—Substitutes the following for cls. (a) and (b) :—

(a) unless the Court otherwise orders, furnish security in movable property for such amount as the Court thinks fit, duly to account for what he shall receive in respect of the property of which he is appointed receiver ;

(b) submit his accounts at such periods and in such forms as may be prescribed."

**Duties.**—See p. 240. R. 3 prescribes only some of these.<sup>52</sup> There are other duties, e.g., to obey the Court ; to take possession of the property ; to preserve it by paying public demands.<sup>53</sup> For failure in these the Court may in a complicated case, direct the applicant to sue and give leave for the purpose.<sup>53a</sup>

**Cl. (a) : Security.**—See pp. 58-60. The Court has unfettered discretion to appoint a receiver without security.<sup>34</sup> But the Privy Council has held that this should obviously be done only in the most exceptional circumstances.<sup>55</sup> If the receiver is an officer of the Court, security may be dispensed with.<sup>56</sup> Where the appellate Court directed the lower Court to appoint a receiver and take security, an appointment without such security is not without jurisdiction and so cannot be collaterally challenged.<sup>57</sup> For surety's liability see 20 C.L.J. 123. Form of bond : See No. 10, App. F of C. P. Code. Surety is not liable to pay interest unless stipulated.<sup>57a</sup>

**Cl. (b) : Accounts.**—See pp. 245-255. Expenses should be supported by voucher which will be generally admissible as evi-

52. 1931 M. 760 : 55 M. 120 : 135  
I. C. 1, 2.

53. 1941 C. 305.

53a. 1959 P. 582.

54. 1952 M-B. 136.

55. 59 I. A. 311 : 36 C. W. N. 882,

887 (parties females or minors : security essential).

56. 42 C. W. N. 92, 95.

57. 46 C. 70 : 22 C. W. N. 520.

57a. 1959 Ker. L. J. 380.



dence of payment.<sup>58</sup> Sanction of the Court is necessary for special expenditure.<sup>59</sup> A receiver's liability for loss due to the wilful default or gross negligence under cl. (d) can now be summarily investigated under O. 40, R. 4 of the present Code.<sup>60</sup> For reopening of accounts and surcharging the receiver *see* p. 253. Chairman of the Board of Receivers (himself responsible) cannot but an auditor should check the accounts.<sup>61</sup> For adjustments of amounts collected by receiver. *see*<sup>62</sup> For procedure in passing accounts *see*<sup>63</sup> Partner-receiver cannot be sued by others in accounts.<sup>63a</sup>

**Cl. (c): Amount due.**—The Court examining the account after allowing the parties to surcharge and falsify it must give the receiver an opportunity to pay the exact (not approximate) amount due before ordering attachment under R. 4.<sup>64</sup> Objection to the system of management cannot be heard as exception to the receiver's accounts but may be the subject of a scheme to be submitted for the orders of the Court.<sup>65</sup>

**Cl. (d): Liability for loss.**—*See* pp. 242-244 ; also under cl. (b) above.

**Appeal: Revision.**—No appeal lies from an administrative order or direction under this rule.<sup>66</sup> But if the order is followed by the coercive order of attachment under R. 4, an appeal from the latter order lies in which the prior order can be attacked.<sup>67</sup> An order under R. 3 may be open to revision.<sup>68</sup>

Enforcement  
of receiver's  
duties.

#### H. 4. *Where a receiver—*

(a) *fails to submit his accounts at such periods and in such form as the Court directs, or*

(b) *fails to pay the amount due from him as the Court directs, or*

(c) *occasions loss to the property by his wilful default or gross negligence,*  
*the Court may direct his property to be attached and*

58. 40 C. L. J. 28 : 82 I. C. 419.	64. 1923 M. 85 : 69 I. C. 203 ; 1931
59. 13 C. L. J. 459 : 6 I. C. 323.	M. 760 : 135 I. C. 1.
60. 1953 B. 105 : 40 C. W. N. 479 ;	65. 1925 L. 309 : 86 I. C. 246.
47 C. W. N. 400 distinguishing 5	66. 35 C. 568 : 12 C. W. N. 648 ; 3
C. W. N. 223, 53 C. 881 ; 1959 P. 323.	R. 318 : 92 I. C. 631 ; 1920 P. 220 : 44
61. 1950 P. 241, 243.	I. C. 207 ; 1957 P. 16 ; 1959 P. 323.
62. (1954) 1 M. L. J. 187.	67. 1931 M. 760 : 135 I. C. 1 ; 1924
63. 43 M. L. J. 707 ; 14 C. L. J.	S 35 : 76 I. C. 203. <i>See also</i> 1950
445 : I. C. 780.	P. 241, 1951 P. 451.
63a. 1956 A. 660.	68. 1924 S. 35 : 76 I. C. 203.



*may sell such properey, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.*

**Madras Amendment.**—It substitutes the following :—

"4. (1) If a receiver fails to submit his accounts at such period and in such form as the Court directs, the Court may order his property to be attached until he duly submits his accounts in the form ordered.

(2) The Court may, at the instance of any party to a suit or proceeding in which a receiver has been appointed or of its own motion, at any time make an enquiry as to what amount, if any, is due from the receiver as shown by his accounts or otherwise, or whether any loss to the property has been occasioned by his wilful default or gross negligence, and may order the amount found due or amount of the loss so occasioned to be paid by the receiver into Court or otherwise within a period to be fixed by the Court. All parties to the suit or proceeding and the receiver shall be made parties to any such enquiry. Notice of the enquiry shall be given by registered post to the surety, if any, for the receiver, but the cost of his appearance shall be borne by the surety himself unless the Court otherwise directs :

Provided that the Court may, when the amount is disputed by the parties and is of a complicated nature or where it is alleged that loss has been occasioned to the property by the wilful default or gross negligence of the receiver, refer the parties to a suit. In all such cases the Court shall state in writing its reasons for the reference.

(3) If the receiver fails to pay any amount which he has been ordered to pay under sub-rule (2) of this rule, within the period fixed in the order the Court may direct such amount to be recovered either from the security (if any) furnished by him under Rule 3, or by attachment and sale of his property, or if his property has been attached under sub-rule(1) of this rule, by sale of the property so attached, and may apply the proceeds of the sale to make good any amount found due from him or any loss occasioned by him and shall pay the balance (if any) of the sale proceeds to the receiver."

**Andhra and Kerala Amendments.**—Same as in Madras.

**Scope.**—This Rule should be read with Rule 3. While r. 3 only declares the duties of the receiver to the Court, it is under r. 4 that his liabilities are worked out and enforced. The only provision for taking action against him, apart from proceeding against the security, is that his property can be attached ; arrest and imprisonment are not to be the methods.<sup>69</sup> The Court has a discretion in deciding whether or not to take the coercive step.<sup>70</sup> No doubt the receiver may be removed from the office

<sup>69</sup>. 55 M. 120 : 135 I. C. 1 ; 24 Cut. L. T. 451.

<sup>70</sup>. 1934 A. 907 : 150 I. C. 750.



by the Court.<sup>71</sup> On transfer of business the new Court has all the powers.<sup>71a</sup> R. 4 cannot apply to proceedings under Cr. P. C.<sup>72</sup>

**Loss to property by wilful default or gross negligence.**—"Property" includes income from its *corpus*; and r. 4 is a residuary provision covering a case of misappropriation also :<sup>73</sup> p. 225. The receiver's account may be reopened on discovery of errors even where he has been discharged. If on enquiry any loss due to his wilful default or neglect is found, the Court may order attachment under this rule or proceed under s. 145 of the Code.<sup>74</sup> If money paid by a receiver does not reach the proper destination he must make good the loss unless he acted with perfect regularity and prudence.<sup>75</sup> R. 4 does not apply to a dead receiver. An application for accounts lies against him only while he is alive and a suit is not essential; but after his death a suit must be brought against his legal representatives to establish the loss occasioned by him or any amount due from him and then to proceed against his property in their hands.<sup>76</sup> Proceeding under r. 4 has to be conducted by the Court itself and not by the party in whose favour the order is made.<sup>77</sup> It is a summary process.<sup>78</sup> Rule 4 is a residuary provision covering a case of misappropriation.<sup>78a</sup>

**Appeal.**—See O. 43, r. 1(s). Only an order of attachment is contemplated by O. 40, r. 4. An order refusing to reopen accounts is not one under this rule and so is not appealable but revisable.<sup>79</sup> No appeal lies from a mere order that a receiver is liable to sub-accepting receiver's accounts is not appealable.<sup>80</sup> Appeal has from r. 3. Under Madras Amendment even an order under R. 4 (2) with no direction for attachment is now appealable.<sup>81</sup> It has been held that an order of enforcement by some illegal means (i.e., other than attachment) cannot save the order from appeal.<sup>82</sup> Order directing payment from amount standing to the receiver's credit is appealable.<sup>83</sup> There is no second appeal.<sup>84</sup> An order

71. 1925 L. 309; 1941 144; 1949 A. 265.

71a. 1962 Kerr. 105. Cf. 66 C. W. N. 43; 1962 C. 519 (injunction case).

72. 1950 A. 490.

73. 39 M. 584; also 1925 P. C. 257 : 92 I. C. 274.

74. 1927 R. 334; 40 C. W. N. 479.

75. 1930 P. 232; 125 I. C. 117.

76. 1954 N. 366. Cf. 47 C. W. N. 400, 404 (death pending appeal).

77. 47 C. W. N. 400, 403; 1943 C. 244.

78. *Ibid*; 1953 B. 105.

78a. 1956 P. 429.

79. 47 C. W. N. 400, 402 dissenting from 45 B. 99; 1959 P. 323.

80. 5 P. L. J. 97; 55 I. C. 15.

81. 1922 M. 234; 65 I. C. 403.

82. 1954 M. 535.

83. 55 M. 120; 135 I. C. 1.

84. 1951 P. 241.

85. 1951 P. 451.



accepting receiver's accounts is not appealable.<sup>86</sup> Appeal lies from an order under r. 4, though the application was mistakenly stated as under r. 3.<sup>87</sup>

R. 5. Where the property is land paying revenue to *the* Government, or land of which the revenue had been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.

When collector may be appointed receiver.

**Madras Amendment.**—It adds as rule 6 :—

"6. Where the property belongs to a co-operative society registered under the Madras Co-operative Societies Act or to a member of such co-operative society, and the Court considers that the interests of those concerned will be promoted by the management of an officer of the Co-operative department, the Court may, with the consent of the officer, appoint him to be receiver of such property".

**Andhra Amendment.**—Same as in Madras.



## APPENDIX C

### FORMS

1

#### APPOINTMENT OF RECEIVER WITHOUT SECURITY OF ESTATE OF INTESTATE

It is ordered that A be and he is hereby appointed the Receiver (without security) of the movable property and of the rents, issues and profits of the immovable property belonging to the estate of B, the intestate in the pleadings in the suit named with power to get and collect the outstanding debts and claims due to the estate of the said intestate and with all the powers provided for in s. 503, cl. (d) [see now O. XL] of the Civil Procedure Code, except that he shall not without the leave of the Court (1) grant leases for a term exceeding three years, or (2) bring suit in a District Judge's Court or a Subordinate Judge's Court except suit for rent, or (3) institute an appeal in any Court (except from a decree in a rent-suit) where the value of appeal is over Rupees 1,000, or (4) expend on the repairs of any property in any period of two years more than half of the nett annual rental of the property to be repaired, such rental being calculated at the amount at which the property to be repaired would let when in a fair state of repair. And it is further ordered that the defendants and all persons claiming under them do deliver up quiet possession of the said property, movable and immovable, of the said intestate together with all leases, agreements for lease, *kabooliats*, accounts, books, papers, memoranda and writings relating thereto to the said Receiver. And it is further ordered that the said Receiver do take possession of the said property, movable and immovable, and collect the rents, issues profits of the immovable property, and that the tenants and occupiers do attorn and pay their rents in arrear and growing rent to the said Receiver. And it is further ordered that the said Receiver shall have power to bring and defend suits in his own name and shall also have power to use the names of the plaintiffs and defendants who are to be indemnified out of the estate and effects of the said intestate and it is further ordered that the receipt or receipts of the said Receiver shall be a sufficient discharge for all such sum or sums of money or property as shall be paid to him as such Receiver as aforesaid.

Dated this

day of

19

2

#### APPOINTMENT OF RECEIVER SUBJECT TO SECURITY

It is ordered, subject to security being given to the satisfaction of the Registrar of this Court, that A be appointed the Receiver of, etc. [same as in last form].



3

### APPOINTMENT OF COURT RECEIVER

It is ordered, that the Receiver of this Court be and he is hereby appointed the Receiver of, etc. [*same as in last two forms*].

4

### APPOINTMENT OF PARTY TO BE RECEIVER

It is ordered, that upon the plaintiff (or the defendant) within from the furnishing security to the satisfaction of the Registrar of the Court he be appointed Receiver of the movable and immovable, etc., etc.

5

### APPOINTMENT OF RECEIVER OF A PARTNERSHIP BUSINESS

It is ordered that the Receiver of this Court be and he is hereby appointed the Receiver to take charge of the partnership business lately carried on between the plaintiff and the defendant at the stock-in-trade thereof and to collect the outstandings of the said business with power to get in and collect the outstanding debt and claims due to the said business and with all powers provided for in s. 503, cl. (d) [see now O. XL] of the Civil Procedure Code. And it is further ordered that the said Receiver shall have power to bring and defend suits in his own name and shall also have power to use the names of the plaintiff and defendant who are to be indemnified out of the said partnership business. And it is further ordered that the parties to this suit do deliver and make over to the said Receiver all the stock-in-trade, books of accounts and all other books, documents, papers and property of the said partnership business in the possession of both or either of them. And it is further ordered that the receipt or receipts of the said Receiver shall be a sufficient discharge for all such sum or sums of money or property as shall be paid or delivered to him as such Receiver as aforesaid. And it is further ordered that the said Receiver be allowed to charge to the estate in addition to his own establishment such further establishment as may be necessary.

6

### ORDER OF REFERENCE TO ENQUIRE WHO SHALL BE APPOINTED RECEIVER

And it is further ordered that it be referred to the Registrar of this Court to enquire. (d) Who will be a fit and proper person to be appointed Receiver of the said trust-estate, such enquiry to be treated as an urgent reference.

7

### APPOINTMENT OF RECEIVER OF IMMOVABLE PROPERTY

It is ordered that the Receiver of this Court be and he is hereby appointed Receiver to collect the rents due and the growing rents of the



premises belonging to the defendant with all powers provided for in s. 503, cl. (d) [see now O. XL] of the Civil Procedure Code, and it is further ordered that the said Receiver do collect the rents already grown due of the said premises until the further order of this Court, and that the tenants or occupier of the said premises do attorn and pay his rent in arrear and growing rents to the said Receiver. And it is further ordered that the said Receiver shall have power to bring and defend suits in his own name and shall also have power to use the name of the defendant who is to be indemnified out of the said property. And it is further ordered that the receipt or receipts of the said Receiver shall be a sufficient discharge for all sums or sums of money as shall be delivered to him as such Receiver as aforesaid. And it is further ordered that the said Receiver do out of the rents of the said premises so to be realised by him as aforesaid retain his commission and charges and out of the balance pay to the plaintiff his costs of and incidental to this application to be taxed by the taxing officer and do hold the residue subject to the further orders of this Court.

8

POWER TO RECEIVER TO APPOINT MANAGER OF A  
BUSINESS AND AGENTS

It is ordered that, pending the final determination of this suit or until the further order of this Court, A(1) be and he is hereby appointed the Receiver in his private capacity without security of the movable property and the rents, issues and profits of the immovable property belonging to the estate of B deceased in the pleadings in this suit named with power to get in and collect the outstanding debts and claims due to the estate of the said deceased and with all the powers provided for in s. 503, cl. (d) [see now O. XL] of the Civil Procedure Code, except [same as form 1]. And it is further ordered that the plaintiff and the defendant and all persons claiming under them do deliver up quiet possession of the said property, movable and immovable, of the said deceased together with all leases, agreement for lease, *koboolats*, accounts, books, papers, memoranda and writings relating thereto to the said Receiver. And it is further ordered that the plaintiff do forthwith make over all the books of accounts and other documents and papers relating to the said estate that are in Calcutta to the said Receiver. And it is further ordered that the said Receiver do take possession of the said property, movable and immovable, and collect the outstandings, debts, due and the rents, issues and profits of the immovable property and that the tenants and occupiers do attorn and pay their rents in arrears and growing rents to the said Receiver. And it is further ordered that the said Receiver shall have power to bring and defend suits in his own name. And it is further ordered that the receipt or receipts of the said Receiver shall be sufficient discharge for all such sum or sums of



money or property, as shall be paid to him as such Receiver as aforesaid. And it is further ordered that the said Receiver be at liberty to appoint a manager or managers for the business belonging to the said estate until the final determination of this suit or until the further order of this Court. And it is further ordered that the said Receiver be paid, as his remuneration, a sum equal to one per cent. on the value of the estate coming into his hands, provided that such remuneration shall not be less than rupees. And it is further ordered that the said Receiver be at liberty to charge to the said estate the cost of such personal establishment as he may consider necessary and that he be at liberty to appoint such person or persons as his agent or agents at Rangoon, Mandalay and Churu as he may consider necessary and proper for the efficient management of the said estate.

9.

CONTINUING RECEIVER PENDING APPEAL.

It is ordered that upon the defendant furnishing security to the satisfaction of the Registrar of this Court for any damage which may accrue to the estate of A, deceased the testator in the pleadings in this suit named by reason of the stay hereinafter directed, the said order. dated the more in so far as it directs the stay of issue of the probate of the will of the said deceased and the discharge of the Receiver appointed in this suit for a period of fourteen days be varied and that in lieu thereof it be ordered that the issue of the said probate to the plaintiff and the discharge of the said Receiver be stayed until the disposal of the appeal preferred by the defendants against the said decree and that the said order so varied do stand and that the said Receiver be continued until the disposal of the said appeal with liberty to the plaintiff to apply to this Court in its original jurisdiction for an order for payment to him by the said Receiver out of the estate of the said deceased of such sum as that Court may deem reasonable in respect of the costs he has already incurred in this suit as also in respect of the costs which may be incurred by him in the said appeal and upon such terms as to security or otherwise as it may think proper and also with liberty to him to apply to such Court that the said Receiver be at liberty to carry on the said testator's business and to apply to this Court if the said appeal be not duly expedited by the defendant (appellant) and also for advancing the hearing of the said appeal when the same shall be ready for hearing. And it is further ordered that the costs occasioned by this appeal be costs in the said appeal preferred by the defendant against the said decree.

10.

RECEIVER APPOINTED TO SUE.

It is ordered that AB be at liberty to pay into Court to the credit of this suit the amount of the debt due by him to the defendant in this suit and which has been attached in execution of the decree in this suit.



And it is further ordered that *CD* (subject to his giving security to the satisfaction of the Registrar of this Court) be and he is hereby appointed Receiver to realize the said debt with power to sue in his own name and all other necessary powers under the provisions of s. 503 [see now O. XL] of the Code of Civil Procedure. And it is further ordered that if the said debt be not paid into Court within one week from the service of this order on the said *AB*, the said Receiver be at liberty to take such steps as may be necessary to realize the amount of the said debt. And it is further ordered that the money so to be realized by the said Receiver be paid into Court to the credit of this Suit.

11.

ANOTHER FORM

It is ordered that the Receiver of this Court be and he is hereby appointed Receiver to realize the decree in suit No. 23 of 1889 (wherein *NDA* is plaintiff and *KBD* is defendant) all filed in execution of the decree made in this suit with all powers provided for in s. 503, cl. (d) [see now O. XL] of the Civil Procedure Code. And it is further ordered that the said Receiver do hold such sale-proceeds subject to the further order of this Court. And it is further ordered that the receipt or receipts of the said Receiver shall be a sufficient discharge for all such sum or sums of money or property as shall be paid or delivered to him as such Receiver as aforesaid.

12.

DISCHARGE OF RECEIVER

It is ordered that *CCM* the Receiver appointed in this suit, do after retaining in his hands a sum sufficient to provide for payment of what shall be due to him and for payment of what he may be personally liable for as such Receiver and for the payment of costs hereinafter directed to be taxed pay the balance if any that shall be in his hands and deliver the movable properties belonging to the estate of *PS* deceased in the pleadings in the suit named together with all documents relating to the said estate to the plaintiff and do retain his own costs and pay to the attorneys to the parties their respective costs of and incidental to this application including the costs of speaking to the minutes of this order such costs to be taxed by the Taxing Officer of this court. The costs of the said Receiver being taxed as between attorneys and client, and that thereupon he be discharged and that he do pass his final accounts before this Court and pay the money that shall be found due from him on the passing of such accounts to the plaintiff and that thereupon the recognizance entered into by the said Receiver and his sureties be vacated. And it is further ordered that the plaintiff do continue to pay to the defendant *SSCD* monthly and every month the sum of Rupees. for her maintenance as directed by the decree of this Court made in



this suit and dated the                      day of one thousand eight hundred and eighty-four and that in default of payment of any two instalments of such monthly payments payable to the said defendant *SSCD* she be at liberty to apply to this Court for the appointment of a Receiver of the properties belonging to the said estate and charged with the payment of such maintenance.

13.

DISCHARGE OF RECEIVER. APPOINTMENT OF NEW RECEIVER.

It is ordered that *A*, the Receiver appointed in this suit of the estate of *B*, deceased in the pleadings in this suit named be and he is hereby discharged from further acting as such Receiver and that he do pass his final accounts before this Court. And it is further ordered that the Receiver of this Court be and he is hereby appointed the Receiver of the movable property and the rents, issues and profits of the immovable property belonging to the estate of the said *B* deceased in the pleadings in the suit named (hereinafter referred to as the said new Receiver) with power to get in and collect the outstanding debts and claims due to the estate and with all the powers provided for in s. 503, cl. (d) [see now O. XL] of the Civil Procedure Code except that [*same as form 1*]. And it is further ordered that the said *A* and all persons claiming under him do deliver up immediate possession of the said property, movable and immovable belonging to the said estate together with all leases, agreements for lease, title-deeds, *kabooliat*, accounts, books, papers, letterpress copy book, letter file book, memoranda and writings of all kinds and description relating thereto to the said new Receiver. And it is further ordered that the said new Receiver do take immediate possession of the said property, movable and immovable, and collect the rents, issues and profits of the immovable property, and that the tenants and occupiers do attorn and pay their rents in arrear and growing rents to the said new Receiver. And it is further ordered that the said new Receiver shall have power to bring and defend suits in his own name and shall also have power to use the names of the plaintiffs and defendants who are to be indemnified out of the said estate. And it is further ordered that the receipts or receipt of the said new Receiver shall be a sufficient discharge for all such sum or sums of money or property as shall be paid to him as such Receiver as aforesaid. [And it is further ordered that the said new Receiver be at liberty to charge Government Commission on the income of the estate after deducting the amount payable for Government Revenue and other public demands, at a rate not exceeding two and a half per cent. And it is further ordered that the said new Receiver be at liberty to charge such sum to the estate for his private remuneration and extra establishment as will not exceed the monthly sum of Rupees nine hundred and fifty heretofore paid to the Receiver for his remuneration and the maintenance of his Sudder establishment exclusive of the Kidderpore and Moffusil establishments but inclusive of Government Commission as afore-



said.(1)] And it is further ordered that the said new Receiver be at liberty from time to time and without the further order of this Court to let out the said estate in *izara*—either in whole or in part in his discretion for a term not exceeding six years in such manner, upon such terms and upon such security as to the said new Receiver may seem proper and reasonable. And it is further ordered that the said new Receiver do out of the said estate pay the costs of all the parties of and incidental to this application to be taxed by the Taxing Officer of this Court to the respective attorneys and debit such payments to the respective shares of the said parties in the said estate.

14.

DISCHARGE OF RECEIVER. APPOINTMENT OF NEW RECEIVER WITH  
POWER TO CARRY ON BUSINESS.

And it is further ordered that the Receiver be and he is hereby discharged from further acting as the Receiver of the said estate and that he do within one month from the date hereof pass his final accounts before one of the Judges of this Court and pay the balance that may be found due on the passing of the said account to the Receiver hereinafter appointed. And it is further ordered that A be and he is hereby appointed the Receiver without security of the movable property including the business carried on at \_\_\_\_\_ in the town of Calcutta (hereinafter referred to as the said movable property) and of the rents, issues and profits of the immovable property belonging to the said estate with power to get in and collect the outstanding debts and claims due to the said estate and with all the power provided for in s. 503 cl. (d) [see now O. XL] of the Civil Procedure Code except that [same as form 1]. And it

---

(1) The Court has, in two cases, had to consider the portion of this order in bracket, which was of an unusual character and has held that the Court Receiver is not at liberty to accept a receivership as Court Receiver on a lower remuneration than the usual 5 per cent., and that this remuneration is intended to cover his own expenses and cost of establishment and that if any extra establishment is considered necessary a case must be made out and a special order obtained. In *Matihur Rohoman v. Masihur Rahoman* (Suit 238 of 1903, Cal. H. C. Order, 18th May 1903), Henderson, J., made an order which was drawn up in due course and was filed on the 15th June, and the Court Receiver took possession. Subsequently when appli-

cation was made to Sale, J., in *Hafiz Nazir Ali v. Elahie Jan Begum* (Suit No. 746 of 1901) on the 27th June, the question came up, and the Judge was informed of the terms of the order in the Ghosal suit (From 13 *supra*) and the order made by Henderson, J. The two Judges then considered the whole question with the result that on the 1st July Henderson, J., recalled the order of the 18th May so far as it allowed a reduced Government Commission and private remuneration and directed that the order be drawn up in the usual form allowing 5 per cent. to the Court Receiver and no more. Sale J., later, on 15th July 1903, made an order in the second suit in the same terms.



is further ordered with the consent of all the parties by their respective attorneys that the said Receiver do carry on the said business and that he be allowed to charge to the said estate such establishment as may be necessary and that he be allowed a remuneration of Rupees a month with liberty to apply for enhanced remuneration when and if the state of the said business shall admit of it and let the consideration of the question of the costs of and incidental to this application and of the reference directed by the said order be reserved until the further order of this Court and the parties are to be at liberty to apply to this Court in respect of the payment for the amounts mentioned in the said report or as they may be advised.

15.

### DISCHARGE : APPOINTMENT OF NEW RECEIVER OF ATTACHED PROPERTY

It is ordered that the said *JK*, the Receiver appointed in this suit, be and he is hereby discharged from further acting as such receiver as aforesaid. And it is further ordered that subject to security being given to the satisfaction of the Registrar of this Court, *DC* of in Calcutta aforesaid, merchant and a member of the firm of *HDDC*, be appointed the Receiver in the place and stead of the said *JK* to realize the sum of Rupees from *KS*, being the amount of the debt due by him to the defendant in this suit and attached in his hands under the said prohibitory order with power to the said Receiver for the purpose of realising such debt to continue the suit No. of One thousand eight hundred and (wherein *JK*, residing in the Town of Calcutta, Merchant and Commission Agent, is plaintiff, and *VLS* residing at in the Town of Calcutta, Broker and Trader, is defendant) in his own name and with all other necessary powers provided for in s. 503 [see now O. XL] of the Code of Civil Procedure. And it is further ordered that the receipt of the said Receiver shall be a sufficient discharge for all sum or sums of money as shall be paid to him as such Receiver as aforesaid. And it is further ordered that the money so to be realized by the said Receiver as aforesaid be paid by him to the Comptroller-General of Accounts for the time being of the Government of India and the Secretary and Treasurer for the time being of Imperial Bank of India with the privity of the Accountant-General of this Court to be by them placed to the credit of this suit subject to the further order of this Court. And it is further ordered that the costs of and incidental to this application be costs in the execution-proceedings in this suit.

16.

### RECEIVERS AND SURETIES BOND

Know all men by these presents that we,	AB and CD	
	are held and firmly bound unto	
RHC	his successors and assigns in the sum of	
Rupees	for which payment to be well and truly made we bind	



ourselves and each of our heirs, executors and administrators firmly by  
these presents sealed with out respective seals dated this                      day  
of                      One thousand nine hundred and

Whereas by an order of the said High Court dated the                      day  
of One thousand nine hundred and                      and made in  
suit No.                      of                      wherein X is plaintiff and Y and Z are defen-  
dants. It was (amongst other things) ordered that subject to security  
being given to the satisfaction of the Registrar of the said Court the said  
AB should be appointed the Receiver in the said suit of the said movable  
property and of the rents, issues and profits of the immovable property  
(other than the family dwelling house) belonging to the estate of  
the plaintiffs in the said suit named with the powers and authorities therein  
particularly mentioned, and whereas the said AB has proposed the said CD  
as his surety and the said Registrar has accepted the proposal and the said  
AB and CD have agreed to enter into the above bond with such condition  
as is hereinunder written.

Now the condition of the above written bond or obligation is such  
that if the said AB shall, from time and at all times hereafter so long as  
he shall continue as such Receiver, duly and faithfully in all respects  
discharge the duties and obligations which shall devolve upon him as  
such Receiver and pass his accounts at the times and in manner by law  
or the rules of the Court or by any order of Court in that behalf provided,  
then the above written bond or obligation shall be void, otherwise the  
same shall be and remain in full force and virtue.

Signed, sealed and delivered  
at                      in the presence of



## INDEX

---

- ABATEMENT of suit does not affect receiver, 195.
- ACCOUNT, default to, 245, 303, 304.  
exceptions to, 247, 304.  
form of, 245.  
irregularity as regards : removal, 261, 262.  
jurisdiction as to, after dismissal of suit, 22, 23.  
keeping of, 245.  
liability of receiver to, 245, 254, 303.  
liability to, when arises, 53.  
matters which may be dealt with on passing of, 246, 247.  
order passing, not appealable, 255, 304.  
passed by Appeal Court, 26.  
passing of, 245, 246.  
payment of balance, 245, 303, 304.  
periods for passing of, 245.  
power to order, though suit not pending, 254.  
procedure in rendering and passing, 246, 303-304.  
remedies after discharge, 254.  
re-opening of, 253, 306.  
submission of, 246, 303.  
surcharging receiver who is discharged, 269.
- ACCOUNTABILITY of receiver, 2, 245, 303.
- ACKNOWLEDGMENT of debt of receiver, 81, 299.
- ACQUIESCENCE as a bar, 29.
- ADMINISTRATOR, bad character, 126.  
receiver against, 123, 129, 289.
- ADMINISTRATOR *PENDENTE LITE* and receiver, 97, 101, 294.
- ADVANCE to party for purposes of defence, 219.
- ADVERSE POSSESSION, destruction of, 7.
- AFFIDAVIT in support of application for appointment, 56, 283.
- AGENCY and receivership, 8, 292.
- AGENT, appointment of, by receiver, 191.
- ALLOWANCE beyond salary, 237, 238, 302.  
power of Court to deal with, after dismissal of suit, 23.
- AMERICA, law of : reference to, 31, 283.
- ANNUITANT, receiver in aid of, 155, 290.
- APPEAL, a creature of statute, 156.  
advance of, 25.  
against direction of Court in passing receiver's account, 253.  
against order refusing to remove receiver, 167, 158, 263, 292.  
as to person selected as receiver, 42.



APPEAL--*contd.*

authorization by District Judge, 21 (old law).  
 by receiver, 158, 227.  
 from order appointing receiver, 156.  
 from order refusing to appoint, 156.  
 from order removing or refusing to remove, 158, 292.  
 from order refusing to discharge receiver, 270.  
 nomination by Sub-Judge, 21 (old law).  
 none against order directing receiver to advance money to guardian  
*ad litem*, 219.  
 none against submitting name of receiver proposed, 157.  
 none from confirmation of nomination, 157.  
 none to Privy Council, 158.  
 no second, 157, 308.  
 receiver appointed until hearing of, 148.

APPEAL COURT, jurisdiction of, in matters concerning receiver, 26.

APPLICATION by party appointed receiver, 223.  
*ex parte*, 55, 284, 291.  
 for discharge of receiver, 266.  
 for orders to be made to Court which appointed receiver, 26.  
 for rateable distribution of assets, 64.  
 for receiver, 55, 291.  
 fresh or subsequent, 57, 96, 284.  
 in respect of estate, 228.  
 no notice, 55, 291.  
 practice as to for discharge or removal, 258.  
 receiver not justified in making, 3.  
 to remove or discharge, 258.  
 withdrawal of, 284.

APPOINTMENT a matter of discretion, 27-34, 142, 151, 291.  
 affecting parties, 53.  
 affects possession not title, 61, 292.  
 affecting third parties, 52.  
 an act of Court, 8, 291.  
 application for, 2, 55, 283.  
 assets realized by, of receiver, 169.  
 authority and extent of, 42.  
 by any Court, 17, 22, 24.  
 by Court of Appeal, 17, 22, 24, 292.  
 by Court of first instance, 17, 22, 24.  
 by District Court, 17, 24 (old law).  
 by High Court, 21, 24.  
 by Magistrate, 34, 79, 295.  
 cannot be questioned collaterally, 60, 226, 227, 303.  
 conflicting in case of several receivers, 71, 294.  
 continuance of, after suit dismissed, 22, 24.  
 Court considers probability of plaintiff's success, 136.  
 Court may make *suo mote* or on application, 2.  
 discretion as to 42, 90.



APPOINTMENT—*contd.*

- discretion how to be guided, 152.
- does not affect claimant in possession, 72, 301.
- does not affect existing contracts or rights of action, 222.
- duration of receivership, 53, 54, 297.
- effect of, 61, 63.
- effects transfer of rights of action, 222.
- evidence necessary in support of application, 127, 284.
- for prohibition of damage, 156.
- forms, 292, App. C.
- fraudulent and collusive, 260.
- improper : removal, 261, 267.
- improvidently made, 260.
- in miscellaneous proceedings, 2, 88, 283.
- in supersession of *bona fide* possessor, 27, 286.
- jurisdiction of, 16-26.
- mode of, 54, 58.
- motion to vacate order of, 258.
- none after dismissal of suit, 22, 283, 297.
- no priority to party at whose instance, 76.
- no relative of party should be selected, 261, 292.
- not of next friend or solicitor in cause, 40, 41.
- not of trustees and executors, 40.
- of Collector as receiver, 39, 305.
- of company, 292.
- of Court receiver, 90.
- of joint receivers, 42, 54, 71, 295.
- of more than one receiver, 71, 294.
- of party as receiver, 38, 39, 292.
- of receiver, 38-87, 292.
- of receiver after decree, 22, 296.
- of receiver : can be made of property not subject-matter of the suit, 43n., 295.
- of receiver : cannot be made to receive money month by month, 51.
- of receiver : is a form of specific relief, 9-13, 294.
- of receiver : not ultimate determination of right, 1, 95, 283.
- of receiver of attached property, 160—169, 295.
- of receiver to sue, 232.
- of receiver under old Codes, Appendix A.
- of receiver under present Code, Appendix B.
- on application, 2, 55, 283.
- operates as injunction, 10, 294.
- order for payment of costs occasioned by, 102.
- order must be completed : contempt, 70.
- over property of person not party to cause, 260, 266.
- pending application for a common manager, 2, 41.
- permanent, 270, 284.



**APPOINTMENT—contd.**

- practice as to, 38, 39.
- provision in mortgage for 150.
- receiver's security, 58, 60, 303.
- refused : subsequent application, 96, 284.
- requires pending suit, 16, 283, 297.
- resident outside judge's jurisdiction, 40,
- right to propose a person for, 38.
- subject-matter of, 23, 43—51.
- subsisting order : immaterial that erroneous, 67.
- suo motu*, 2, 283.
- time from which takes effect, 52, 53.
- time when receiver may be appointed, 51.
- to be made on principles governing English Courts, 30, 134, 283, 297.
- who may be appointed, 38—45, 292.
- without direction as to security, 60, 303.

**ARBITRATION**, receiver in case of, 155, 283.

**ASSIGNMENT** during suit, 4.

**ATTACHED PROPERTY**, effect of misappropriation by receiver of, 176—186, 306.

- no manager before attachment, 23.
- powers and duties of receiver of, 169.
- receiver not necessarily of, 23, 295.
- receiver of, 160—186.
- receiver of : appointment, 164, 165.
- receiver of : powers, 8.
- receiver of, under Code, 9.
- removal of receiver, 186, 292.

**ATTACHMENT**, alienation prohibited after, 173.

- for contempt, 35.
- in execution of decree, 162.
- meaning of "under," 51.
- not superseded by appointment of receiver, 166.
- of ghatwali estate, 169.
- of money in hands of receiver : contempt, 63, 65, 66.
- of property in hands of receiver, 36, 293.
- of receiver's property, 304.
- only for sums actually due, 162.
- power of, 34.
- receiver can be appointed without, 23, 295.
- receiver can only satisfy claims of decree-holders, 167.
- receiver does not prevent second, 167.
- receiver of property under, 48.
- receiver to sue for debt attached, 175.
- title of property under, in judgment-debtor, 178.

**ATTORNMENT** to receiver, 193, 195.



- BENGAL TENANCY ACT, receivers in suits under, 22.
- BOND, action on, 184.  
     of receiver, 184.  
     of sureties, 58, 184, 276.  
     of surety : enforcement of, 59, 305.
- BORROWING, by receiver, 214—217.  
     leave for, 214—217, 299.  
     powers of, 172.
- CALCUTTA MUNICIPAL ACT, notice under s. 408 of, 242.
- CHARGE, authority to receiver to advance money, 235, 300.  
     compensation of receiver a, 234.  
     declaration of, on estate in hands of Commissioner, 217.  
     leave to receiver to, property, 109, 172—214, 299.  
     receiver not entitled to, incurred for paying certain officers, 193.
- CHARGES, receiver's priority of, 239n., 302.
- COLLECTOR, appointment of, as receiver, 39, 305.
- COLLUSION, removal of receiver where, 260.
- COMMISSION, receiver's, 237, 302.
- COMMON, manager, position of, analogous, 7.
- COMPANY, 155, 296.
- COMPENSATION of receiver a charge (see "*Salary*"), 234.
- CONDUCT of person making application for receiver, 27, 29, 286.
- CONSIGNEE, appointment of, 6.
- CONTEMPT, agreement restricting powers, 9.  
     application for commencing proceedings for, 3, 4.  
     by disturbing receiver's possession, 3, 293.  
     by suing receiver without leave, 77, 293.  
     consent immaterial, 67.  
     none before completion of appointment, 52, 67, 301.  
     of Courts Act, 35.  
     order must state over what property receiver appointed, 70.  
     order must be completed, 70.  
     possession may be taken where estate determined, 71.  
     powers of Appellate Court, 36.  
     powers of High Court in matters of, 36.  
     powers of Mofussil Courts, 36.  
     proceedings by way of, 35, 36.  
     proceedings for, in Appeal Court, 32.  
     punishment for, 35, 36.  
     receiver may be guilty of, 37.  
     receiver of foreign property, 68.  
     sale of mortgaged property, 66, 290.  
     to bring suit to interfere receiver's possession without leave, 67.  
     to constitute, title must be perfected, 68.  
     where several receivers, 71.  
     who should initiate proceedings by way of, 37.



- CONTINUANCE** of receiver by decree, 51—53.
- CONTRACT** by receiver, 83, 300.  
     enforcement of, 83—88.  
     existing, not affected by appointment of receiver, 223.  
     power of Court to summarily enforce, 202.  
     receiver appointed to sue for contribution on, 175.  
     receiver in case of, 136—183, 291.
- CONVEYANCE**, receiver in case of, 136.
- CORPORATION**, receiver against, 123, 155.
- CO-SHARER**, effect of surrender of management, 104, 107.  
     partition, 108, 287:  
     possession of, 103.  
     receiver against, 103, 104.  
     right to joint management, 104, 287.  
     waste by, 103, 287.
- COSTS** in respect of application for removal, 259, 262.  
     liability of receiver for, 224.  
     right of receiver to, out of fund, 296, 302.  
     right of receiver to be indemnified against, 234.  
     when receiver ordered personally to pay, 245.
- COURT OF APPEAL**, jurisdiction to appoint receiver, 22, 24, 25, 26.  
     may substitute injunction for receiver, 25, 284.  
     receiver appointed by, 149, 292.
- COURT RECEIVER**, appointment of, 39.  
     no reference as to security, 59.
- COURT OF REVISION**: jurisdiction, 24, 26.
- COVENANT**, liability of receiver on, 244.  
     receiver in case of, 136, 138, 291.
- CREDITOR** and debtor: receiver, 138—141.  
     general, 138, 291.  
     judgment, 138, 140, 141, 291.  
     special, 138, 139, 140.
- CRIME**, fact that act is a, does not take away jurisdiction, 24.
- CRIMINAL OFFENCE**, existence of, no bar to appointment, 93.
- CRIMINAL PROCEDURE CODE**, effect of order passed under, 34, 295.  
     receiver under, 5, 51.
- DEBENTURE HOLDER**, receiver in action by 155n.
- DEBT**, discharge of, by receiver debited against share 217, 218.  
     incurred by receiver: liability, 234, 300.  
     power of receiver to pay instalment, 221.
- DEBTOR** and creditor: receiver, 138—141.
- DECREE**, enforcement of, 34—37.  
     receiver appointed after, 22, 52, 296.  
     receiver appointed or continued by, 52.  
     receiver continued after, 54.
- DEFENDANT**, receiver appointed at instance of, 55, 283.
- DELEGATION** by receiver, 191.



- DISCHARGE** by dismissal of suit, 22.  
 consent of incumbrancer, 265.  
 conditional, effect of, 269n.  
 continuance of lien, 302.  
 final, of receiver, 264—274.  
 formal application should be made for, 269.  
 functions of receiver continue until, 22.  
 liability to account, 254, 255.  
 none until amount due to receiver paid, 270.  
 none until object of receivership accomplished, 268.  
 non until receiver or manager paid, 236.  
 of receiver distinguished from removal, 256, 257.  
 of receiver : jurisdiction, 256—258.  
 of sureties, 274—276.  
 plaintiff must establish title, 268.  
 prejudicing rights of others than plaintiff, 265.  
 property will not be made over until lien discharged, 240.  
 upon application of party applying, 264.  
 upon appointment of administrator *pendente lite*, 265.  
 upon final decree, 268.  
 when takes place, 264.  
 where allegations fully denied, 267.  
 where appointment improper, 267.  
 where continuance unnecessary, 265, 266.  
 where infant tenant-in-common, 265.  
 where interests will be promoted by, 268.  
 where permanent appointment, 270.  
 where receiver has been appointed by Appeal Court, 26.  
 who may make motion for, 266.
- DISCRETION** as to appointment, 26, 34, 90, 291.  
 as to appointment : ejection, 135, 136.  
 as to appointment of receiver of attached property, 164.  
 as to removal and discharge, 257.  
 as to who shall be appointed, 42, 292.  
 Court of Appeal may correct, 27, 286.  
 meaning of, 27—29.  
 to be exercised by receiver, 189.  
 to discharge in case of permanent appointment, 270.  
 to grant injunction, 26.  
 where none in case of discharge of receiver, 267.
- DISTRAINT**, right of, by landlord, 72.
- DISTRICT COURT**, appointment by, 17, 21, 170.
- DURATION** of receivership, 53, 54, 297.
- DUTY OF RECEIVER**, amount of care expected from, 242.  
 as to leaseholds, 194.  
 enforcement of, [O. 40, r. 4].  
 generally, 241—255, 303.  
 not to involve estate in expense, 189.



**DUTY OF RECEIVER—contd.**

- obedience to Court, 241, 303.
- of attached property, 170—241.
- of partnership, 121, 288.
- regulated by Civil Procedure Code, 279.
- to account, 245—255, 302.
- to be impartial, 242.
- to give information to Court, 245.
- to keep control over property, 242.
- to obtain direction of Judge, 189, 190, 193, 299.
- to take possession, 193, 242, 301, 303.

**EJECTMENT** action : receiver in, 135, 136, 287.

by receiver, 189, 196—201, 227, 300.

**ENFORCEMENT** of orders and decree, 34—37.

**ENGLAND**, law of, 30—34, 283.

**EQUITABLE EXECUTION**, meaning of, 161, 162, 165, 166, 297.

receiver in aid of judgment, 140, 141.

**EXCEPTIONS** to receiver's accounts. 247, 304.

**EXECUTION**, stay of (see "*Attachment*"), 25.

**EXECUTOR**, absent, 127.

bad character, 127, 289.

Mahommendan, 129, 130.

not generally appointed receiver, 40.

poor : involvent, 127.

receiver against, 127, 130.

will not be displaced on slight grounds, 127, 128.

**EX-PARTE** application for leave to sue, 82.

application for receiver, 55.

**EXPENSES**, to be supported by voucher, 245, 303.

**EXTENSION** of receivership, 55.

**FOREIGN COURT**, litigation in : receiver, 155.

**FRAUD**, removal of receiver where, 260.

**FUNCTIONS** of receiver, 4, 5, 292.

of receiver continue until discharge, 22.

See "*Powers, Duties and Rights of receivers.*"

**GARNISHEE**, order on, 175.

**HIGH COURT**, powers of, 20, 32.

**HINDU WIDOW**, receiver against, 115, 284, 289.

when rents property of, and not assets of deceased, 175.

**IMPARTIALITY** of receiver, 1, 38—40.

removal for want of, 261, 285.

**INCOMPETENCE** of receiver : removal, 261, 262, 285.

**INDEMNITY** of receiver, 234—237, 302.

of surety, 276.



- INFANCY**, infant tenant-in common, 104.  
     money payable to infant, 189.  
     receiver in case of, 1, 4, 123, 130, 131.
- INJUNCTION**, a form of specific relief, 9, 294.  
     against debtor, 138.  
     discretion as to issue of 26, 91, 92.  
     distinction between receiver and, 9, 10, 11, 134, 135, 136.  
     grant of, in lieu of receiver by Appeal Court, 30, 284.  
     in case of partnership, 122.  
     object of, 10.  
     receiver operates as, 10, 35, 62, 65.  
     separable remedy from receiver, 11.  
     to restrain proceedings against receiver, 78.  
     to stay waste, etc., 227.
- IN PERSONAM** Court acts, 69.  
     judgment : enforcement of 34.  
     power of Court, 17—20.
- INSOLVENCY**, receivers in, 5, 9.
- INSOLVENT** receiver discharged, 59, 260.  
     surety, 59.
- INTERIM RECEIVER**, appointment of, 55.  
     without security, 53, 59 303.
- INTERPLEADER** suit : receiver, 155, 287.
- JOINT ESTATE**, receiver of, 45, 49.
- JOINT OWNERS**, receiver as between, 46, 94 103—114, 287.
- JOINT RECEIVER** 42, 54, 71, 295.
- JOINT TENANTS**, receiver in case of 103—114, 287.
- JUDGMENT** does not vest property, 163.  
     right to have executed, 163.
- JUDGMENT-CREDITOR**, receiver at instance of, 184.  
     right of, to have debt paid into his own hands, 180.
- JUDGMENT-DEBTOR**, debt due from third person to, 175, 298.  
     discharge of, by payment, 176—186.  
     misappropriation of payment by receiver, 176—186, 306.  
     receiver to sue property of, 176.  
     what must be shown by, to have receiver, 167.
- JURISDICTION**, act being criminal does not deprive Court of, 23.  
     general features of, 1—37.  
     in partition-suit, 109.  
     of Court of appeal, 22.  
     order of Magistrate not bar to, 24.  
     property out of : appointment of receiver, 18, 20, 69, 70.  
     to appoint receivers, 16—26.  
     to remove and discharge receiver, 256, 258, 292.  
     value of suit, 23.



**JURISDICTION—*contd.***

- where no question can be raised as to correctness of order, 112.
- where suit has been dismissed, 269.

**JUST AND CONVENIENT**, meaning of 27, 32, 285.

**LEASE** : attornment to receiver, 193, 195.

- by receiver, 188, 299.
- by receiver, enforcement of, 83.
- enforcement of, against receiver, 201, 202.
- notice to quit by receiver, 176—201.
- power of receiver to, 201, 299.
- receipt of rent by receiver, 196.
- receiver entitled to arrear rent, 196.
- tenants interfering with rents, 196.
- waste by lessee, 204.

**LEASEHOLD**, receiver of, 51, 137, 289.

**LEAVE**, nature of, 81.

- notice not necessary, 82, 293.
- to sue : practice as to, 82, 293.
- to sue receiver, 80.
- to sue when unnecessary, 82.

**LEAVE TO BID** given to receiver, 204.

**LEAVE TO DEFEND** suit, 232, 233, 300.

**LEAVE TO SUE** to receiver, 225, 226, 233, 300.

**LIABILITY OF RECEIVER** : amenability to Court, 241, 303—304.

- as to properties, 248.
- extent of, in respect of fault of another, 243, 244.
- for costs in actions instituted by him, 224.
- for debts incurred by him, 234.
- for loss, 243—245, 303—304.
- for loss where fund put out of his control, 193.
- for mistake, 243.
- generally, 241—255.
- in respect of negligence, 243.
- in respect of property he might have received, 243.
- misappropriation by employees of receiver, 255.
- none in respect acts done under order, 241.
- on covenants, 245, 300.
- only to Court appointing him, 257.
- personally to pay costs, 245.
- regulated by Civil Procedure Code, 279.
- termination of, 245.
- to account, 239—255, 303.
- to account when arises, 53.



**LIABILITY OF RECEIVER—contd.**

- to be sued, 226.
- to make good loss caused by breach of duty, 196.
- towards third parties, 244.
- where money misappropriated, 176, 185.
- where suit defended without leave, 233.

**LIEN** not divested by receiver's sale, 211.

- of attorney on fund in receiver's hands, 240.
- of receiver, 239, 240, 302.
- of receiver of involvent, 6.
- party to conveyance having, 207.
- receiver's, not affected by dismissal of suit, 270.
- receiver's title subject to existing, 61.

**LIMITATION** and receiver, 81, 82, 299.

- application for execution, 174.
- application to enforce execution: payment of money collected by receiver, 211, 222.
- appointment of receiver does not suspend, 62.
- payment of instalment of a debt, 221.
- payment of instalment of interest by receiver, 221.
- receiver cannot avail himself of, 222.

**LIQUIDATOR** and receiver, 41.

- receiver moving against, without leave, 42.

**LOSS** arising from default: receiver responsible, 178, 306.

- as between innocent parties devolves on estate, 179, 180.
- liability of receiver for, 243—245.
- plaintiff not liable for, 244.

**LUNACY** money payable to lunatic, 189.

- receiver in case of, 123, 131.

**MAGISTRATE**, receiver appointed by, 34, 295.

**MAINTENANCE**, right to, 106, 156, 290.

**MANAGEMENT**, powers of, 168—169, 292.

**MANAGER** and receiver synonymous, 178, 294.

- appointment of, 6.
- appointment of, by receiver, 302.
- lien of, 240.
- meaning of, 5, 6.
- of Temple Committee, superseded by receiver, 22.
- powers and duties of, 179.
- powers of Court with regard to management, 6.
- responsibility of, 6.
- under Act VIII of 1859, 177.
- when Court will appoint, 6.

**MINES**, receiver of, 103, 104.



- MISAPPROPRIATION** by receiver, 176—186, 306.
- MISCONDUCT** of receiver : removal, 261, 262, 285.
- MISTAKE**, liability of receiver for, 243.
- MORTGAGE** : application by mortgagee for discharge of receiver, 266.  
     of property over which receiver appointed, 67.  
     provision in, for appointment of receiver, 147, 148.  
     receiver at instance of mortgagor, 141—145.  
     receiver between first and junior mortgagees, 152—155.  
     receiver for protection of mortgagee, 145—150.  
     receiver in case of, 141—155, 289.  
     sale cannot be held till completion of administration, 210.  
     suit, decree for sale : receiver's possession, 82.  
     suit for foreclosure or sale : receiver, 148.  
     suit : receiver, 44.
- MORTGAGEE**, prior : enforcement of rights of, 71.  
     prior : receiver affecting, 61.  
     See "*Mortgage.*"
- MOTION** for receiver, 55.  
     liberty to renew, 55, 56.  
     varied *ore tenus* : practice, 219, 220.
- NEGLIGENCE**, of receiver, liability for, 243, 303, 304.  
     removal of receiver for, 262, 305.
- NEXT FRIEND** not appointed receiver, 41.
- NOTICE TO QUIT** given by receiver, 196—201.
- NOTICE**, under s. 80—3, 293.
- ORDER**, enforcement of, 34—37 |  
     meaning of final, 159.
- OWNER-RECEIVER**, appropriation of funds by, 242n.
- PARAMOUNT TITLE**, those claiming under, must obtain leave, 71.
- PARTITION**, suit for : Court may raise money on whole estate, 214, 215.  
     suit for : misappropriation : receiver, 23.  
     suit : jurisdiction to deal, with whole property, 109.  
     suit : receiver in, 45, 66, 108—114, 287.
- PARTNERSHIP**, a mere case for dissolution not sufficient, 117.  
     as a general rule dissolution must be sought, 115—117.  
     death or bankruptcy, 118.  
     duty of receiver of, 117.  
     exclusion of partner, 118, 119.  
     levying execution against assets, 72.  
     misconduct of partner, 117.  
     partnership already dissolved, 119.  
     party appointed receiver in cases of, 1.  
     proof of, 118.  
     receiver after decree, 22.  
     receiver of, 94, 115, 122, 288.  
     where injunction : appropriate relief, 122.



- PARTY**, all proper parties must be before Court, 57.  
 application by person not, to suit, 74—76.  
 appointment of, as receiver, 38, 292.  
 bound by orders in respect of management of property, 62.
- PAY**, receiver of, 43.
- PAYMENT** by receiver, 188, 217—222.  
 improper, by receiver, 243.  
 of balances by receiver 245, 303, 304.  
 of temporary loan taken from receiver's fund, 222.  
 receipt of receiver discharges, 220.
- PENSION**, receiver of, 43, 296.
- PETITION** for receiver, 55, 283.  
 proceedings upon, against receiver, 72, 77.
- PLAINT**, prayer for receiver, 51, 54, 284.
- PLEDGE** of property by receiver, 214, 299.
- POSSESSION** affected by appointment of receiver, 61, 72.  
 claimant for, must obtain leave, 71.  
 co-sharer entitled to, 103.  
 direction to deliver of, 205.  
 disturbance of, 3, 4, 34, 63—76, 293.  
 disturbance of, by third persons, 63.  
 effect of, of parting with control, 192.  
 for benefit of parties, 51 292.  
 in mortgage-suit not affected till decree for sale, 82.  
 may be taken before order of appointment drawn up, 60.  
 may be taken where estate determined, 71.  
 must be given to party declared entitled, 9.  
 nature of, of receiver, 7, 292.  
 not adverse, 51, 61.  
 of Court and of receiver : distinction, 63, 64.  
 of land not taken, 71.  
 of receiver, 3, 4, 34, 63—76, 94, 95.  
 of receiver : nature of, 61.  
 of receiver : party with paramount right, 72.  
 order on party to give up, 227.  
 parties must give up, to receiver, 69.  
 property in possession of receiver cannot be seized by Execution Court 64, 293.  
 receiver allowing party to retain, 262.  
 removal of party from, by Court, 103, 104.  
 right of receiver to, 103.  
 sheriff may not disturb, 35.  
 steps by receiver to defend, 3.  
 where several receivers, 71.
- POWER OF RECEIVER**, acknowledgment of debts, 81, 299.  
 advance of money to party or purposes of defence, 220.



**POWER OF RECEIVER—*contd.***

- agreement restricting : contempt, 9.
- appointed by Magistrate, 5.
- borrowing, 214—217.
- cannot spend money except under order of Court, 179.
- cannot waive right to recover, 175.
- general, 198—200, 299—300.
- no greater than those of parties, 9.
- none in respect of property not attached, 175.
- of attached property, 170.
- of property in suit, 170.
- payment, 217—222.
- power of Court to provide for management 6, 23.
- sale, 205—214.
- to carry on business, 314.
- to charge property, 110, 214.
- to contract, 190.
- to delegate, 191.
- to discharge debts, 218, 221.
- to forgive arrears, 203.
- to give notice to quit, 197—201.
- to lease, 202.
- to manage, 9, 292.
- to raise money, 110, 113.
- to raise money, 110, 113.
- to raise or abate rent, 203.
- to repair 189.
- to take possession, 193.
- under s. 503, 178.
- when full, 14, 299.

**PRACTICE as to appointment, 52, 54, 58.**

- in passing accounts, 246, 303.
- of Court of Chancery, 15, 283.
- should be same as that of English Courts, 32, 283.

**PREVENTIVE RELIEF, grant of, 26.**

**PROBATE, discharge of receiver on grant of, 48.**

- in solemn and common form, 98.
- proceedings : receiver, 97—102.
- receiver pending litigation as to, 232*n.* 283.

**PRO INTERESSE SUO examination, 5, 72.**

- practice with regard to, 73.

**PROPERTY need not be subject to suit or attachment, 43—51, 295.**

- over what, receiver may be appointed, 43, 295.

**PROPERTY SUBJECT OF SUIT, cases of disputed title, 131—136.**

- cases where plaintiff possesses an admitted interest, 103—140.
- cases where the property is *in medio*, 97, 286.



PROPERTY SUBJECT OF SUIT—*contd.*

- control and management of, 114.
- criminal offence, 93.
- in possession of adoptive mother, 115.
- meaning of, 99, 111.
- power of Court to appoint receiver of, 113.
- prima facie* title to be made out, 92.
- principles relating to receivers of, 89—150.
- receiver of, 89—159.
- removal of property, 92.
- suit for contribution, 233.
- testamentary suits, 97, 98.

PROTECTIVE RELIEF, grant of, 26.

PURCHASER, right of receiver at sale by, 204—211.

*QUIA TIMET*, bills, 12

- relief given on principle of, 12, 294.

RECEIPT for payment, 188.

- for payment by infant in excess of sanctioned amount, 220.
- of receiver, a discharge, 189.

RECEIVER, a form of specific relief, 220, 294.

- accountability of, 2.
- acknowledgment, of debt, 81, 299.
- after decree, 22, 52.
- after sale pending application to set it aside, 141.
- amenability of, to Court, 241.
- amount of care expected from, 242.
- application against, by person not party to suit, 74—76.
- application by, in respect of estate, 234.
- appointed any time before decree, 51.
- appointed on behalf of all parties, 178.
- appointed or continued by decree, 52.
- appointed to collect moneys is not agent of either party, 180.
- appointed to sue, 233.
- appointment cannot be questioned collaterally, 61.
- appointment of, 38.
- See "*Appointment.*"
- appointment of a, matter of discretion, 26—34, 291.
- appointment of, after refusal, 57.
- appointment of, at instance of defendant, 55, 283.
- appointment of, governed by English principles, 28, 134.
- appointment of, is not ultimate determination of right, 95, 96.
- appointment requires pending suit, 16.
- cannot delegate, 191.
- cannot be sued without notice under s. 80, 3, 293.



RECEIVER—*contd.*

- cannot sue or be sued without leave, 226, 232, 293.
- case for appointment of, 164.
- changes possession but not title, 7, 292.
- character when acting rightly, 111.
- conflict where more than one, 37, 155, 294—295.
- contracts by: enforcement of, 83—88.
- course of party claiming right paramount to, 71.
- Court, 39.
- definition and nature of office of, 1—9, 292.
- discretion as to appointment of, 16, 91, 92, 291.
- discretion of, 189.
- disobedience of orders of, not an offence, 37.
- distinction between injunction and, 10, 11, 12, 125.
- does not represent estate for all purposes, 175.
- duration of receivership, 53, 54.
- duties and liabilities of, 240—255, 303.
- duty to obey orders of Court, 37, 240, 303.
- effect of appointment, 61—63.
- enforcement of orders and decrees, 34—37.
- estate held by, is in *monibus curiæ*, 254.
- extension of receivership, 57, 188.
- final discharge of, 264, 274.
- functions of, 4, 5, 292.
- functions of, continue until discharge, 22.
- general features of jurisdiction, 1—37.
- general objects sought by appointment, 4.
- has no estate or interest for himself, 203, 292.
- holds for benefit of party ultimately entitled to, 7, 292.
- in cases of disputed title, 93, 287.
- in original miscellaneous proceedings, 2, 88.
- indemnity, 234—235.
- insolvent, 59.
- interlocutory order for examination of accounts of, 255.
- in testamentary suit, 56.
- is required to be impartial, 242, 292.
- jurisdiction to appoint, 16—26, 32.
- jurisdiction to remove, 32, 292.
- law of limitation and, 81.
- law relating to, 13—16.
- liability of person improperly assuming character of, 245.
- lien of, 239, 240, 302.
- liquidator and, 41.
- loss arising from default of, 178, 303.
- manager and, synonymous, 5, 178, 294.
- may be guilty of contempt, 37.
- may sue in his own name or that of party, 228, 229, 300.
- misappropriation by, 176—186, 306.
- mode of appointment, 54—58.
- more than one, 71, 72, 294.



RECEIVER—*contd.*

- not agent for either party, 7, 8, 292.
- not judicial officer, 292.
- not personally liable in suits brought against him, 80.
- not public servant, 37.
- not representative of either party, 7, 292.
- obedience of, to Court, 241, 292, 303.
- object and effect of, 1, 2, 11.
- obstruction of, not penal, 37.
- officer of Court, 8, 292.
- officer of Court : possession, 69.
- officer of Court and subject to its orders, 178, 292.
- of attached property : powers of, 8.
- of attached property : removal, 186.
- of land, rents and profits, 62.
- of leaseholds bound by obligations imposed, 137.
- of permanent character, 54.
- of property in suit, 89—159.
- of property outside jurisdiction, 18—20, 295.
- of property under attachment, 160—186.
- of undivided share, 45—48.
- operates as attachment, 298.
- operates as injunction, 11, 36, 62, 65.
- over what property may be appointed, 5, 295.
- party guilty of contempt against, 35—37.
- party obtaining appointment has no greater control over, 180.
- position of a, 3.
- possession by, before order drawn up, 60.
- possession of, 3, 63—76.
- See "*Possession.*"
- powers and rights of, 170, 299.
- powers of, 2.
- practice relating to, 32.
- principles upon which appointed, 27, 28, 30, 35, 285.
- proceedings against, by suit or petition, 72—74.
- public officer, 3, 80.
- quasi-assignee, 228.
- refusal or neglect of, to comply with order of Court, 37.
- removed cannot appeal, 158.
- rent-decree after estate passed to, 63.
- resignation of one of joint, 54.
- right of, against third person, 194.
- right of, to accretion to property, 50.
- rights and powers of, 187—240.
- rights of parties interfered with by, 72.
- salary, 238, 239, 301.
- sale : by right of purchaser, 205—214.
- security given by, 58—60, 303.
- separable remedy from injunction, 11.
- stronger case required than in case of injunction, 29.



subject-matter of appointment, 43—52.  
succeeding, cannot sue former for funds in latter's hands, 246.  
suit or application against, 76—87.

**RECEIVER—*contd.***

suit by or defended by receiver, 222—224.  
summary enforcement of contract of, 202.  
the hands of the Court, 8.  
time from which appointment takes effect, 52, 53.  
time when, may be appointed, 51.  
title of : existing liens, 61.  
title paramount to, 61.  
to account to Court appointing him, 251.  
to furnish details of expenditure, 245.  
to sue for contribution on contract, 175.  
to sue for debt due by third person, 174, 175.  
to sue for debts attached, 174.  
to sue for property of judgment-debtor, 175.  
under Criminal Procedure Code, 5.  
under the Insolvency Act, 10.  
when a Court may appoint a, 2.  
when entitled to legal assistance, 190.  
when legally clothed with character, 53.  
when not necessary party to suit, 82, 83.  
when party entitled ascertained, his receiver, 178.  
when suit may be brought against, without leave, 80.  
who has collected moneys holds them for Court, 181.  
who may be appointed, 38, 292.

**REFERENCE as to security, 58—60.**

to enquire and report as to appointment of receiver, 58.

**REMAINDERMAN and tenant for life : receiver, 94, 114.**

**REMOVAL OF RECEIVER, appeal, 158.**

application for, to be made to Court appointing, 258.  
appointed over property of person not party, 260.  
by consent of parties, 261.  
distinguished from discharge, 256.  
for misconduct and incompetence, 261, 262.  
for partiality, 262.  
of attached property, 186, 258.  
order of refusal : appeal, 263, 292.  
receiver's authority continues until order for, 197.  
upon application of parties, 260—263.  
upon his own application, 258, 259.  
where appointment improvident, 260.  
where appointment ought not to have been made, 260.  
where fraud or collusion, 260.  
where no necessity for continuance, 260, 261.  
where receiver becomes bankrupt, 260.  
where security insufficient, 260.



REMUNERATION, 237, 301.

RENT, receipt of, 188.

REPAIR by receiver, 189.

power of receiver to, 188.

RETIREMENT, application for : new appointment on, 58.

RIGHTS OF RECEIVER as to management of suit, 228.

cannot avail himself of limitation, 222.

delegation : employment of assistant, 238.

not greater than those of party, 223.

payment of extraordinary expenses, 239.

regulated by Civil Procedure Code, 279.

to allowances beyond salary, 236.

to appeal, 228.

to appear on motion for removal 258.

to apply for instructions, 190.

to be relieved, 259.

to charge in respect of money advanced, 240.

to charges and expenses incurred, 238.

to costs, charges and expenses, 238.

to costs out of fund, 236.

to indemnity, 234—239.

to lien, 239, 240.

to make application, 234.

to payment for services even when acting without salary, 239.

to possession, 193, 194.

to re-imbursement, 236.

to salary, remuneration and allowances, 238, 239, 302.

RIGHT TO SUE, receiver's, 222.

SALARY, allowances beyond, 236, 302.

none generally in case of trustee, 238.

none, where party receiver, 39.

of receiver, 238, 239, 302.

of receiver : reference as to receiver of, 43.

SALE by court, 205, 206, 207.

by receiver : right of purchaser, 205—211.

by receiver does not divest lien, 211.

by receiver of estate outside Calcutta, 212.

leave to bid given to receiver, 211.

of property by receiver, 211.

receiver in case of, 137.

SECURITY, appointment with and without, when takes effect, 58.

certificate of, 59.

court may dispense with, 60, 303.

given by court receiver, 59, 303.

insufficient : removal of receiver, 260.

receiver becomes such on giving, 52.

to be given by receiver, 58—60.

SEQUESTRATION, of goods or lands, 35.

SHARE, undivided : receiver of, 45, 46.



- SHERIFF may not disturb receiver's possession, 35n.
- SMALL CAUSE COURT, appointment by, 21, 284.  
power to appoint receiver, 14n.
- SOLICITOR in cause not appointed receiver, 41.
- SPECIFIC PERFORMANCE, object of, 10.  
relief by, 10.  
suit for : receiver, 136, 291.
- SPECIFIC RELIEF, ACT, 278.  
receiver a form of, 9, 14.  
(See also "*Injunction*"), 9.
- SUBROGATION, acquisition by receiver of right by, 223.
- SUCCESSION CERTIFICATE, suit without, 300.
- SUE, power of receiver to, 187.
- SUIT against receiver 76—88.  
against receiver : leave to defend, 232, 233.  
against receiver without previously obtaining leave,  
by or defended by receiver, 222, 233, 300.  
by receiver, defence to, 223.  
by receiver : latter has no privileges, 223.  
by receiver, must show authority, 225.  
by receiver, name in which suit should be brought, 228. 229.  
effect of delay in instituting a, 29.  
leave to bring, against receiver, 77.  
leave to sue, 226.  
receiver a necessary party to, 77.  
receiver must not bring, without leave, 189.  
receiver not a necessary party to, 82, 83.  
test whether receiver a necessary party to, 88.  
to determine rights and liabilities of parties, 247.  
to receiver's possession of property, 231.
- SUMMARY power, 83-87.
- SURETY, action against, on bond, 276.  
application of, for removal of receiver, 261—262.  
bankrupt, 59, 274.  
bond, of 58, 274, 315.  
death of, 274.  
discharge of, 274—276.  
entitled to be reimbursed, 275.  
form of bond of, 315.  
in a sense an officer of Court, 276.  
indemnified for what he has paid for receiver, 276.  
liability of, 276.  
of receiver, 58.  
putting bond in suit against co-surety, 276.  
right of, against co-surety, 276.
- TENANT-FOR-LIFE and remainderman : receiver, 93, 113.
- TENANT-IN-COMMON, infant : discharge of receiver, 103, 265.  
receiver as between, 45, 46, 103—114.
- TESTAMENTARY PROCEEDINGS, receiver in, 49, 93, 97—102.
- TITLE, cases of disputed : receiver, 131—136.



## INDEX

337

- not affected by appointment of receiver, 7—61.
- paramount to that of receiver, 71.
- TRANSFER of property where receiver appointed, 61, 62.
  - power to, where estate vested in receiver, 63.
- TRUST, Court unwilling to appoint receiver in case of, 124, 125.
  - definition of, 278.
  - express, 123.
  - implied, 123, 124.
  - misconduct of trustee, 125.
  - poverty and insolvency of trustee, 124.
  - receiver in case of, 22, 94, 124—127.
- TRUSTEE, definition of, 278.
  - not generally appointed receiver, 40.
  - required to act without salary, 238.
- VALUATION of suit : jurisdiction, 23, 24.
- VOUCHERS, to support accounts, 245, 246.
- WAIVER of right by receiver, 175.
- WASTE by co-sharer, 103, 287.
  - by lessee, 204, 289.
  - by mortgagor, 148, 289.
  - by trustee, 125, 288.
- WILFUL DEFAULT, liability of receiver for, 243, 303.



### ABBREVIATIONS (illustrative)

A, As, B. C, Cut, D, Dac, Kar, L, LUCK, M, M-B, N, O, Or, P, R, S, T-C, *mean* Allahabad, Assam, Bombay, Calcutta, Cuttack, Dominion, Dacca, Karachi, Lahore, Lucknow, Madras, Madhya Bharat, Nagpur, Oudh, Orissa, Patna, Rangoon, Sind, Travancore-Cochin respectively. NUC *means* Notes of unreported cases as made in All India Reporter.

A.—Indian Law Reports, Allahabad.  
(1937) A—*Ibid.*, of 1937.  
1937 A—All India Reporter,  
Allahabad, 1937.  
A. L. J.—Allahabad Law Journal.  
A. W. N.—Allahabad Weekly Notes.  
A. W. R.—Allahabad Weekly  
Reporter.  
B. L. R.—Bengal Law Reports.  
B. R.—Bihar Reports.  
Bom. H. C.—Bombay High Court.  
Bom. L. R.—Bombay Law Reporter.  
Bom. P. J.—Bombay Printed.  
Judgment.

C. P. L. R.—Central Prov. Law  
Report.  
Ch. D.—L. R. Chancery Division.  
F. C.—Federal Court.  
I. A.—Law Report, Indian Appeal.  
I. C.—Indian Cases.  
K. B.—Law Report, Kings Bench.  
M. I. A.—Moore's Indian Appeals.  
M. L. T.—Madras Law Times.  
P. R., Pun Re—Punjab Records.  
S. C.—Supreme Court.  
W. N.—Weekly Notes.  
W. R.—Weekly Reporter.

### ADDENDA

O. 40, R. 1 : S. 51 (d) :—*See* p. 297. Receiver can be appointed in execution proceedings : 1963 Jab. L. J. 696 ('*after decree*', not restricted to execution). This mode of execution is legal and statutory, though appointment of receiver is to be on equitable principles, *i.e.*, just and convenient : 67 C. W. N. 350 ; 1964 M. 39.

In an administration suit Court can appoint receiver and authorise him to sue on title challenging alienation of property : 1963 C. 647. Receiver authorised to collect debts can sue in his own name only in his capacity as a receiver : Misdescription of plaintiff in cause title may be amended at any time : 1964 S. C. 818 approving 34 C. 305. As to 'empowering the receiver' *see* p. 299.

H2843

